Report of the matters transacted by the Minister of Labour and Manpower during 1984 under the provisions of the:

Labour Relations Act

Public Service (Collective Bargaining) Act

Fishing Industry (Collective Bargaining) Act

Newfoundland Teacher (Collective Bargaining) Act

Report of the Labour Standards Board for the year 1984

Report of the Newfoundland Labour Relations Board for the year 1984

Labour Standards Regulations, 1985

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Analysis of the requests for conciliation referred to the Minister during 1984

1. Total requests referred to the Minister during 1984		70
Requests rejected by the Minister		0
Total requests referred to conciliation officers		70
2. Disputes referred to conciliation officers under:		
The Labour Relations Act	57	
The Public Service (Collective Bargaining) Act	12	
The Fishing Industry (Collective Bargaining) Act	0	
The Newfoundland Teacher (Collective Bargaining) Act	1	
TOTAL:	70	70

Total number of persons included in bargaining units involved in labour disputes settled with the assistance of conciliation officers.	8,010

DISPOSITION OF DISPUTES

1.	Disputes in progress as of 31 December, 1983		17
2.	Disputes referred to conciliation officers during 1984		70
			87
3.	Disputes resolved under:		
	The Labour Relations Act	49	
	The Public Service (Collective Bargaining) Act	1	
	The Fishing Industry (Collective Bargaining) Act	0	
	The Newfoundland Teacher (Collective Bargaining) Act	0	
4.	Disputes considered to have lapsed under:		
	The Labour Relations Act	7	
	The Public Service (Collective Bargaining) Act	0	
	The Fishing Industry (Collective Bargaining) Act	0	
	The Newfoundland Teacher (Collective Bargaining) Act	0	
5.	Disputes being dealt with by conciliation officers as of 31 December, 1984, under:		
	The Labour Relations Act	16	
	The Public Service (Collective Bargaining) Act	12	
	The Fishing Industry (Collective Bargaining) Act	1	
	The Newfoundland Teacher (Collective Bargaining) Act	1	
	TOTAL:	87	87

Disputes referred to a conciliation board after being dealt with by a conciliation officer under:

The Labour Relations Act	0
The Public Service (Collective Bargaining) Act	0
The Fishing Industry (Collective Bargaining) Act	0
The Newfoundland Teacher (Collective Bargaining) Act	0

Report of the matters transacted by the Minister of Labour and Manpower during 1984 under the provisions of The Labour Relations Act

This report is presented in accordance with Section 144 of the Act.

Conciliation

Pursuant to the provisions of The Labour Relations Act, the Minister received requests for conciliation services during 1984, seeking assistance toward the settlement of labour disputes involving the conclusions of collective agreements between the following parties:-

1. United Brotherhood of Carpenters and Joiners of America, Local 2564 and T & G Woodworkers, Appleton.
2. Newfoundland Association of Public Employees and Lewisporte Town Council.
3. Transport and Allied Workers Union, Local 855 and Victoria Town Council.
4. United Brotherhood of Carpenters and Joiners of America, Local 1009 (Millwrights) and Newfoundland Zinc Mines, Daniel's Harbour.
5. St. John's Allied Printers' Union, Local 441 and Creative Printers and Publishers Limited, St. John's.
6. United Steelworkers of America, Local 6285 and Wabush Mines Limited, Wabush.

7. St. John's Allied Printers' Union, Local 441 and The Evening Telegram, St. John's.

8. Energy and Chemical Workers Union, Local 820 and Ultramar Canada Limited, St. John's.

9. International Association of Fire Fighters, Local 1222 and City of Corner Brook.

10. Newfoundland Association of Public Employees and Town of Grand Bank.

11. Retail, Wholesale and Department Store Union, Local 597 and Cara Operations Limited, Gander International Airport.

12. Retail, Wholesale and Department Store Union, Local 597 and Eastern Drug Services Limited, Donovans Industrial Park.

13. International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 898 and Famous Players Theatres (Avalon Mall Cinemas, St. John's).

14. Transport and Allied Workers Union, Local 855 and Central Dairies Limited, St. John's.

15. Canadian Paperworkers Union, Local 157 and Vanguard Paper Box Limited, Donovans Industrial Park.

16. International Association of Machinists and Aerospace Workers, Lodge 950 and Brown Offshore Limited, St. John's.

17. Canadian Paperworkers Unions, Locals 63 and 88, Grand Falls; Local 161, Botwood; and Local 1093, Stephenville and Abitibi Price Incorporated.

18. United Brotherhood of Carpenters and Joiners of America, Local 1009 (Millwrights) and E. F. Barnes Limited, St. John's.

19. Communications Workers of Canada, Local 410 and Newfoundland Telephone Company Limited.

20. Newfoundland Association of Public Employees and Port au Port Roman Catholic School Board, Stephenville.

21. Transport and Allied Workers Union, Local 855 and A. Harvey and Company (Pipeyards), St. John's.

22. Newfoundland Association of Public Employees and Port aux Basques Integrated School Board.

23. Newfoundland Fishermen, Food and Allied Workers, Local 1252 and Maple Leaf Mills Limited (Hillcrest Farms), St. John's.

24. United Steelworkers of America, Local 6204 and Canada Catering Limited, Goose Bay.

25. Retail, Wholesale and Department Store Union, Local 597 and City Consumers Co-Operative Society Limited, St. John's.

26. United Steelworkers of America, Local 7144 and Canadian Liquid Air Incorporated, St. John's.

27. Canadian Brotherhood of Railway, Transport and General Workers, Local 550 and Hotel Newfoundland, St. John's.

28. Retail, Wholesale and Department Store Union, Local 597 and Blue Buoy Foods Limited, St. John's.

29. Clarenville District Workers Union and Newfoundland Hardwoods Limited, Clarenville.

30. Transport and Allied Workers Union, Local 855 and Capital Crane Limited, St. John's.

31. International Union of Operating Engineers, Local 904 and Canadian Mine Development Limited (Gold River Construction), Cat Arm Hydro Electric Project.

32. Canadian Paperworkers Union, Local 159 and Newfoundland Containers Limited, Donovans Industrial Park.

33. Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and Newfoundland Transportation Company Limited (Portugal Cove/Bell Island Ferry).

34. Bakery, Confectionery and Tobacco Workers Union, Local 381 and Eastern Bakeries Limited, St. John's.

35. Newfoundland Fishermen, Food and Allied Workers, Local 1252 and Lewisporte Wholesalers Limited, Lewisporte.

36. Bakery, Confectionery and Tobacco Workers International Union, Local 381 and General Bakeries Limited, St. John's.

37. Canadian Union of Public Employees, Local 569 and St. John's Municipal Council and Bowring Park Committee.

38. Canadian Union of Public Employees, Local 1560 and R. C. School Board, St. John's.

39. International Brotherhood of Electrical Workers, Local 2330 and Frelco Plant Division, Stephenville.

40. Newfoundland Association of Public Employees and Town of Nain.

41. Retail, Wholesale and Department Store Union, Local 597 and Brookfield Ice Cream Limited, St. John's.

42. Canadian Union of Public Employees, Local 1349 and Town of Botwood.

43. Canadian Union of Public Employees, Local 2300 and Notre Dame Integrated School Board and Pentecostal School Board, Lewisporte.

44. International Association of Machinists and Aerospace Workers, Lodge 544 and Corner Brook Automobile Dealers Association.

45. Transport and Allied Workers Union, Local 855 (Mechanics) and St. John's Automobile Dealers' Association.

46. Retail, Wholesale and Department Store Union, Local 597 and Atlific (Nfld.) Limited, (Holiday Inn), St. John's.

47. Transport and Allied Workers Union, Local 855 (Stockroom Employees) and Regatta Ford Sales Limited, Terra Nova Motors Limited and Royal Garage Limited, St. John's

48. International Association of Machinists and Aerospace Workers, Lodge 544 and Corner Brook Foundry and Machine Company Limited, Corner Brook.

49. Newfoundland Association of Public Employees (Maintenance Personnel) and Memorial University of Newfoundland, St. John's.

50. United Steelworkers of America, Local 7713 and Baie Verte Mines Incorporated.

51. Newfoundland Association of Public Employees (Security Personnel) and Memorial University of Newfoundland, St. John's.

52. Newfoundland Association of Public Employees and Versa Services, represented by Versa Services Limited and Newfoundland Hospital Association.

53. United Steelworkers of America, Local 6185 and Town of Wabush.

54. International Association of Machinists and Aerospace Workers, Lodge 544 and Hickman Motors Limited and Jim Penney Limited, Gander.

55. United Steelworkers of America, Local 7144 (Office Employees) and Canadian Liquid Air Incorporated, St. John's.

56. Retail, Wholesale and Department Store Union, Local 597 and Donovans Wholesale Limited, Donovans Industrial Park.

57. Canadian Union of Public Employees, Local 2386 and Town of Gander.

Disputes referred to Conciliation Officers under The Labour Relations Act

1.	Disputes in progress as of 31 December, 1983		14
2.	Disputes referred to conciliation officers during 1984		57
3.	Disputes resolved at conciliation officer level	38	
4.	Disputes referred to and resolved by conciliation boards after being dealt with by conciliation officers	0	
5.	Disputes resolved with the assistance of conciliation officers after strike action by union or lockout by employer	10	
6.	Disputes considered to have lapsed	7	
7.	Disputes being dealt with by conciliation officers as of 31 December, 1983	16	
	TOTAL:	71	71

Appointed under The Labour Relations Act

Conciliation Board

NIL

Requests for the Appointment of Arbitrators Under The Labour Relations Act

1. On 21 December, 1983, the Minister received a request from the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 740, St. John's, for the appointment of a single arbitrator to deal with a grievance between that Union and M. & M. Engineering Limited, St. John's.

   The Minister contacted the Company advising them of the request and on 4 January, 1984, appointed Mr. Gordon G. Easton, Q.C., the sole arbitrator to deal with the matter.

2. On 12 January, 1984, the Minister received a request from the Sheet Metal Workers International Association, Local 512, St. John's, for the appointment of an arbitrator to deal with a grievance between that Union and Beck Construction Limited. St. John's.

   The Minister invited comments from the Company on whether grounds existed which would prohibit the appointment of an arbitrator and when advised there were grounds, referred the matter to the Labour Relations Board for determination.

   The Labour Relations Board ruled that there was no collective agreement in effect between the Company and Union and so the Minister decided not to proceed with the appointment of an arbitrator.

3. On 12 January, 1984, the Minister received a request from the Sheet Metal Workers International Association, Local 512, St. John's, for the appointment of an arbitrator to deal with a grievance between that Union and Easteel Industries Limited, St. John's.

The Minister requested comments from the Company on whether grounds existed which would prohibit the appointment of an arbitrator and determining there were none, appointed Professor Howard Dyer the sole arbitrator to deal with the matter.

4. On 20 January, 1984, the Minister received a request from the International Association of Machinists and Aerospace Workers, Lodge 927, Gander, for the appointment of a chairperson to an arbitration board to deal with a grievance between that Union and Bordeaux Maintenance Services (Maritime) Limited, Moncton.

   The Minister advised the Company of the request and was subsequently informed the parties would meet on their own to resolve the grievance.

5. On 3 February, 1984, the Minister received a request from the International Union of Operating Engineers, Local 904, St. John's, for the appointment of an arbitrator to deal with a grievance between that Union and TIW Construction (a division of Canadian Erectors Limited, Toronto).

   The Minister contacted the Company advising them of the request and after considering their reply, appointed Mr. Gordon G. Easton, Q.C., sole arbitrator in the case.

6. On 21 February, 1984, the Minister received a request from Mr. Edward J. Shortall of Shortall, English; Barristers, Solicitors and Notaries, for the appointment of an arbitrator to deal with a grievance between their client, United Brotherhood of Carpenters and Joiners of America, Local 579 and McNamara-Wimpey-Northern Joint Venture at the Cat Arm Hydro Project.

The Minister invited comments from the Employer on whether grounds existed which would prohibit the appointment of an arbitrator and determing there were none, appointed Mr. Paul David Dicks the sole arbitrator to deal with the matter.

7. On 23 February, 1984, the Minister received a request from the Sheet Metal Workers International Association, Local 512, St. John's, for the appointment of an arbitrator to deal with a grievance between that Union and F. J. Murphy & Sons Limited, Mount Pearl.

   The Minister contacted the Company advising them of the request and was informed an arbitrator had been agreed upon and the matter was proceeding along regular channels.

8. On 7 March, 1984, the Minister received a request from Mr. Edward J. Shortall of Shortall, English; Barristers, Solicitors and Notaries, for the appointment of an arbitrator to deal with a grievance between their client, United Association of Plumbers and Pipe Fitters, Local 740 and Pack's Plumbing and Heating (1983) Limited, St. John's.

   The Minister advised the Company of the request and was subsequently informed the parties had mutually agreed upon the appointment of an arbitrator.

9. On 2 April, 1984, the Minister received a request from the International Brotherhood of Electrical Workers, Local 2330, St. John's, for the appointment of an arbitrator to deal with a grievance between that Union and R. F. Collins Electrical, St. John's.

The Minister referred the matter to the Company for their comments on whether grounds existed which would prohibit the appointment of an arbitrator and after considering their reply, appointed Professor Howard Dyer as sole arbitrator.

10. On 10 April, 1984, the Minister received a request from Mr. Edward J. Shortall of Shortall, English; Barristers, Solicitors and Notaries for the appointment of an arbitrator to deal with a grievance between their client, the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Local 740 and Sooley's Plumbing and Heating Limited, St. John's.

The Minister requested comments from the Company on whether grounds existed which would prohibit the appointment of an arbitrator and was advised that the Company felt it was not bound by a collective agreement.

The matter was then referred to the Labour Relations Board for a decision and it was determined there is no collective agreement in effect between the parties. The Minister then decided that there were no grounds to proceed with the appointment of an arbitrator.

11. On 18 May, 1984, the Minister received a request from Mr. Clyde Wells of Wells and Company; Barristers, Solicitors and Notaries, for the appointment of an arbitrator to deal with a grievance between their client, F. A. Tucker (Newfoundland) Limited, Cat Arm Hydro Electric Project and International Brotherhood of Electrical Workers, Local 1620.

The Minister considered the request but was subsequently notified that the matter had been resolved and it would not be necessary for him to appoint an arbitrator.

12. On 3 July, 1984, The Minister received a request from the Canadian Brotherhood of Railway, Transport and General Workers, Local 550, St. John's, for the appointment of an arbitrator to deal with a grievance between that Union and the Battery Limited, St. John's.

The Minister requested comments from the Employer with respect to the appointment and on 15 August, 1984, appointed Professor Howard Dyer the sole arbitrator in the case.

13. On 13 July, 1984, the Minister received a request from the Canadian Brotherhood of Railway, Transport and General Workers, Local 550, St. John's, for the appointment of an arbitrator to deal with a grievance between that Union and the Battery Hotel Limited, St. John's.

The Minister considered the request and on 15 August, 1984, appointed Professor Howard Dyer as sole arbitrator.

14. On 13 July, 1984, the Minister received a request from the Canadian Brotherhood of Railway, Transport and General Workers, Local 550, St. John's, for the appointment of an arbitrator to deal with a grievance between that Union and the Battery Hotel Limited, St. John's.

The Minister considered the request and on 15 August, 1984, appointed Professor Howard Dyer as sole arbitrator.

15. On 8 August, 1984, the Minister received a request from the Retail, Wholesale and Department Store Union, Local 597, St. John's, for the appointment of a nominee to an arbitration board to represent Blue Buoy Foods Limited, St. John's, to deal with a grievance between these parties.

    The Minister contacted the Company advising them of the request and was notified the matter had now been resolved.

16. On 22 August, 1984, the Minister received a request from the United Steelworkers of America, Local 8484, Baie Verte, for the appointment of an arbitrator to deal with a grievance between that Union and Consolidated Rambler Mines Limited, Baie Verte.

    The Minister invited comments from the Company on whether grounds existed which would prohibit the appointment of an arbitrator and when advised there were grounds, referred the matter to the Labour Relations Board for a decision on whether or not a collective agreement between the parties existed.

    The Labour Relations Board determined there was a collective agreement in effect between the parties and the Minister could now proceed with the appointment of an arbitrator.

17. On 5 September, 1984, the Minister received a request from the Retail, Wholesale and Department Store Union, Local 597, St. John's, for the appointment of a nominee to represent the Mamateek Motor Inn, Corner Brook, on an arbitration board to deal with a grievance between these parties.

The Minister requested comments from the Employer on whether grounds existed which would prohibit the appointment of the nominee. The Employer did object to the appointment stating they were not bound by a collective agreement.

Based on the question as to the existence of a collective agreement between the parties, the Minister referred the matter to the Labour Relations Board for a decision. The Board determined that there is a collective agreement in effect and the Minister could now proceed with the appointment of a nominee to the arbitration board.

18. On 5 September, 1984, the Minister received a request from the International Association of Machinists and Aerospace Workers, Lodge 927, Gander, for the appointment of a nominee to represent Bordeaux Maintenance Services (Maritime) Limited, Gander, on an arbitration board to deal with a grievance between these parties.

The Minister contacted the Employer requesting comments with respect to the appointment of a nominee and was subsequently advised a nominee had now been selected and it would not be necessary for him to proceed with an appointment.

19. On 11 September, 1984, the Minister received a request from the Transport and Allied Workers Union, Local 855, St. John's for the appointment of the Company nominee to an arbitration Board to deal with a grievance between that Union and Moffatt Brothers (a division of C. P. Express and Transport Limited) St. John's.

The Minister requested comments from the Company with respect to the appointment of a nominee and was informed there was objection to the appointment based on non-existence of a collective agreement between the parties.

Based on the question as to the existence of a collective agreement between the parties, the Minister referred the matter to the Labour Relations Board for a decision.

20. On 2 October, 1984, the Minister received a request from the Sheet Metal Workers International Association, Local 512, St. John's, for the appointment of an arbitrator to deal with a grievance between that Union and R. S. Rogers (1980) Limited, St. John's.

The Minister requested comments from the Company on whether grounds existed which would prohibit the appointment of an arbitrator and determining there were none, appointed Mr. Gordon G. Easton, Q.C., as sole arbitrator.

21. On 1 November, 1984, the Minister received a request from the International Alliance of Theatrical Stage Employees and Moving Picture Machine Operators of the United States and Canada, Local 898, St. John's, for the appointment of an arbitrator to deal with a grievance between that Union and Avalon Mall Theatres, St. John's.

The Minister considered the request and on 7 November, 1984, appointed Professor Howard Dyer as sole arbitrator.

22. On 28 November, 1984, the Minister received a request from the International Union of Operating Engineers, Local 904, St. John's, for the appointment of an arbitrator to deal with a grievance between that Union and N. & L. Construction Limited, Stephenville.

The Minister requested comments from the Company with respect to the appointment of an arbitrator and was informed there was objection to the appointment based on non-existence of a collective agreement between the parties. Therefore, based on this objection, the Minister referred the matter to the Labour Relations Board for a decision.

Report of the matters transacted by the Minister of Labour and Manpower during 1984 under the provisions of The Public Service (Collective Bargaining) Act, 1973

This report is presented in accordance with Section 43 of that Act.

Conciliation

Pursuant to the provisions of The Public Service (Collective Bargaining) Act, the Minister received requests for conciliation services during 1984 seeking assistance toward the settlement of labour disputes involving the renewal of collective agreements between the following parties:-

1. Newfoundland Nurses' Union and Her Majesty the Queen in Right of Newfoundland represented by Treasury Board and Newfoundland Hospital Association.

2. Newfoundland Association of Public Employees (Waterford Hospital Support Staff) and Her Majesty the Queen in Right of Newfoundland represented by Treasury Board and Newfoundland Hospital Association.

3. International Brotherhood of Electrical Workers, Local 1615 and Newfoundland and Labrador Hydro Corporation, St. John's

4. Newfoundland Association of Public Employees (Provincial Hospitals' Support Staff) and Her Majesty the Queen in Right of Newfoundland represented by Treasury Board and Newfoundland Hospital Association.

5. Newfoundland Association of Public Employees (Maintenance and Operational Services) and Her Majesty the Queen in Right of Newfoundland represented by Treasury Board.

6. Newfoundland Association of Public Employees (General Service) and Her Majesty the Queen in Right of Newfoundland represented by Treasury Board.

7. Newfoundland Association of Public Employees (Warders' Bargaining Unit) and Her Majesty the Queen in Right of Newfoundland represented by Treasury Board.

8. Newfoundland Association of Public Employees (Laboratory and X-Ray Employees) and Her Majesty the Queen in Right of Newfoundland represented by Treasury Board and Newfoundland Hospital Association.

9. Newfoundland Association of Public Employees and Newfoundland Liquor Corporation.

10. Canadian Union of Public Employees, Locals 488, 641, 879, 990, 1270, 1271, 1568, 1581, 1584, 1644, 2072, 2574,and 3027 (Hospital Support Staff) and Her Majesty the Queen in Right of Newfoundland represented by Treasury Board and Newfoundland Hospital Association.

11. Newfoundland Association of Public Employees (Newfoundland Farm Products Corporation Employees) and Her Majesty the Queen in Right of Newfoundland represented by Treasury Board.

12. International Brotherhood of Electrical Workers, Local 1615 and Newfoundland and Labrador Housing Corporation, Stephenville.

Disputes referred to Conciliation Officers under The Public Service (Collective Bargaining) Act

1.	Disputes in progress as of 31 December, 1983		1
2.	Disputes referred to conciliation officers during 1984		12
3.	Disputes resolved at conciliation officer level	1	
4.	Disputes referred to conciliation board after being dealt with by conciliation officers	0	
5.	Disputes resolved with the assistance of conciliation officers after strike action by union or lockout by employer	0	
6.	Disputes considered to have lapsed	0	
7.	Disputes being dealt with by conciliation officers as of 31 December, 1984	12	
	TOTAL	13	13

Appointed under The Public Service (Collective Bargaining) Act

Conciliation Boards

Nil

Requests for the Appointment of Arbitrators Under The Public Service (Collective Bargaining) Act

1. On 11 April, 1984, the Minister received a request from the Newfoundland Association of Public Employees, St. John's, for the appointment of a nominee to an arbitration board to represent the Health Science Centre, St. John's, to deal with a grievance between these parties.

   The Minister contacted the employer, advising them of the request and was informed a nominee had now been selected. Therefore, it would not be necessary for the Minister to proceed with an appointment.

2. On 14 June, 1984, the Minister received a request from the Newfoundland Association of Public Employees, Corner Brook for the appointment of an arbitrator to deal with a grievance between that Union and the Western Memorial Regional Hospital, Corner Brook.

   The Minister contacted the employer, advising them of the request, and was subsequently informed the matter had been resolved.

Report of the matters transacted by the Minister of Labour and Manpower during 1984 under the provisions of The Fishing Industry (Collective Bargaining) Act, 1971

This report is presented in accordance with Section 35 of that Act.

Conciliation

Pursuant to the provisions of The Fishing Industry (Collective Bargaining) Act, the Minister did not receive a request for conciliation services during 1984.

Disputes referred to Conciliation Officers under The Fishing Industry (Collective Bargaining) Act

1.	Disputes in progress as of 31 December, 1983		1
2.	Disputes referred to conciliation officers during 1984		0
3.	Disputes resolved at conciliation officer level	0	
4.	Disputes referred to conciliation boards after being dealt with by conciliation officers	0	
5.	Disputes considered to have lapsed	0	
6.	Disputes being dealt with by conciliation officers as of 31 December, 1984	1	
	TOTAL	1	1

Requests for the Appointment of Arbitrators Under The Fishing Industry (Collective Bargaining) Act

Nil

Report of the matters transacted by the Minister of Labour and Manpower during 1984 under the provisions of The Newfoundland Teacher (Collective Bargaining) Act, 1973

This report is presented in accordance with Section 35 of that Act.

Conciliation

Pursuant to the provisions of The Newfoundland Teacher (Collective Bargaining) Act, the Minister received the following request for conciliation services during 1984 seeking assistance toward the settlement of a labour dispute involving the following parties:-

1. Newfoundland Teachers' Association and Her Majesty the Queen in Right of Newfoundland represented by Treasury Board and the Newfoundland and Labrador School Trustees Association.

Disputes referred to Conciliation Officers under The Newfoundland Teacher (Collective Bargaining) Act

1.	Disputes in progress as of 31 December, 1983		1
2.	Disputes referred to conciliation officers during 1984		1
3.	Disputes resolved at conciliation officer level	1	
4.	Disputes referred to conciliation board after being dealt with by conciliation officers	0	
5.	Disputes being dealt with by conciliation officers as of 31 December, 1984	1	
	TOTAL	2	2

Appointed under The Newfoundland Teacher (Collective Bargaining) Act

Conciliation Board

Nil

REPORT OF THE PROCEEDINGS OF THE LABOUR STANDARDS BOARD COVERING THE CALENDAR YEAR, 1984

The Labour Standards Board established under authority of The Labour Standards Act consists of three members, one who is representative of the interests of employers, one representative of the interests of employees, and one designated as Chairman, who shall be independent.

The function of the Board is to advise Government on Labour Standards matters generally and in particular minimum wages.

During the year 1984, the following persons comprised the membership of the Labour Standards Board:-

Donald T. Dooley, Chairman
Howard Crane, Representative of Employers
Reginald Anstey, Representative of Employees

Robert Forward, Assistant Director of Labour Standards, Department of Labour and Manpower, acted as Secretary of the Board.

As directed by the Minister of Labour and Manpower, the Board in July, 1984 reviewed the minimum wage provision as contained in The Labour Standards Regulations, 1983. Prior to the review, the Board requested written briefs from interested parties and held public hearings throughout the Province.

Written briefs were presented to the Board by the following:

(1) The Newfoundland and Labrador Employers' Labour Relations Council
(2) The Newfoundland and Labrador Federation of Labour
(3) The St. John's Board of Trade
(4) The Provincial Advisory Council on the Status of

(4) Women, Newfoundland and Labrador
(5) The Newfoundland and Labrador Advisory Council (Jointly with No. 6)
(6) The Newfoundland and Labrador Association of Youth Serving Agencies
(7) Newfoundland Restaurant and Foodservices Association
(8) Ms. Katherine Penney, Private Citizen, Corner Brook
(9) The Corner Brook and District Labour Council
(10) The City of Corner Brook (Council)
(11) The Corner Brook Status of Women Council
(12) The Chamber of Commerce, Corner Brook
(13) Mr. R.P. White, owner/operator, Bay St. George Seafoods Limited
(14) Wabush Labrador City District Council
(15) Town of Labrador City (Council)
(16) Labrador East Youth Advisory Council

Following the public hearings written briefs were also received by the Board from Mr. Harold Lear, Seal Cove, Conception Bay and Mrs. Carmel Yow, St. John's.

In addition to these briefs, oral presentations were made by the following persons:-

1. Mr. Peter Fenwick - N.D. Party Leader
2. Mr. Gavin Will, N.D. Party Vice President
3. Mr. David Kirkland - Business Manager, Students Union (M.U.N.)
4. Mr. Robert Dornan, Students Union Vice President
5. Mr. Emerson G. Barbour, President, Nfld. Real Estate Association

A total of twelve public hearings were held as follows:

1.	February 22, 1984	Happy Valley
2.	February 23, 1984	Wabush
3.	February 29, 1984	Memorial University of Nfld. & Labrador, St. John's
4.	March 1, 1984	College of Trades & Technology, St. John's
5.	March 5, 1984	St. Alban's Bay D' Espoir
6.	May 8, 1984	Stephenville
7.	May 9, 1984	Corner Brook
8.	May 10, 1984	Grand Falls
9.	May 14, 1984	Gander
10.	May 14, 1984	Clarenville
11.	May 16, 1984	St. John's (2 Sessions)

The Board also held eight other meetings during 1984;those were mainly taken up with matters relating to the minimum wage review and to two matters respecting minimum wage exemptions on behalf of handicapped persons. As well, the Chairman and Secretary attended the Annual Atlantic Conference of Minimum Wage Board Chairmen which was held at Halifax, Nova Scotia on the 23rd and 24th October, 1984.

At the conclusion of the public hearings the Board submitted its report and recommendations to the Minister of Labour and Manpower. The report was submitted on July 17, 1984 and as a result, the Lieutenant-Governor in Council, approved most of the recommendations of the Board. These changes were proclaimed into force on January 1, 1985.

The changes are summarized as follows:-

1. The minimum wage increased to $4.00 an hour from $3.75 an hour for employees sixteen years of age and over.
2. The overtime rate increased to not less than $6.00 an hour (time and one-half the minimum rate).
3. The deductions from the prescribed minimum wages where meals, board and lodging are provided was revised as follows:

3. a) for single meals	$1.20 (from $1.10)
b) for board & lodging	$29.00 (from $27.00)
c) for board only	$19.00 (from $17.50)
d) for lodging only	$9.00 (from $8.15)

4. The minimum wage rate for persons in domestic services in private homes was increased from $2.25 an hour to $2.75 an hour. All other provisions of subsection (2) of Section 9 of the 1983 Regulations with respect to overtime remain unchanged.
5. An employer requiring an employee to wear a uniform or special articles of wearing apparel, the employer shall not reduce the wages of the employee below the minimum wage by deductions from wages for such furnishings.

Government also indicates it accepted the following recommendations which require amendments to The Labour Standards Act and it is assumed these will be enacted during the next session of the House of Assembly. These recommendations are quoted hereunder in their entirety:-

1. Registration of Wage Claims (Section 37, Labour Standards Act)

Section 37 of The Labour Standards Act provides for a person to whom unpaid wages are due and owing first priority and claim over the claims of all creditors of an employer to the extent of $2,000.00. However, this right is ineffective unless the person to whom the wages are unpaid gives written notice of his claim to the Director. The Board recommends that this Section be amended to permit duly authorized representatives to file a single wage claim to the Director covering a class or group of employees.

2. Adoption Leave

Section 38 to 42 of The Labour Standards Act provides for certain conditions which permits a female employee to obtain maternity leave for a period of six weeks immediately following the actual date of birth of her child. The Board recommends that similar privileges be given to an employee for a period of leave immediately following the date of adoption of a child for a period of 8 (eight) weeks providing such employee notifies his/her employer in writing at least one month in advance of the actual adoption date and that the employee had been employed under a contract of service with the same employer for a continuous twelve month period immediately preceding the actual date of the adoption.

3. Tips and Gratuities

The Labour Standards Act is practically silent on the subject of tips and gratuities but the Act does exclude them from being considered as part of an employees wages. The Board recommends that legislation be enacted to make the following provisions:-

(1) Tips and Gratuities are the property of the employee to whom or for whom they are given and shall not be withheld by the employer notwithstanding any consent given by the employee.

(2) Where a surcharge or other charge is paid in lieu of a tip or gratuity, the amount paid shall be deemed to be a tip or gratuity for the purpose of number (1).

May we take this opportunity to thank the personnel of the Department of Labour and Manpower for their assistance and co-operation throughout this review.

Donald Dealey

Chairman

Report of The Labour Relations Board from 1 January, 1984 to 31 December, 1984

The Labour Relations Board was established under the provisions of The Labour Relations Act, 1977. The Board has the responsibility for certain provisions of (1) The Labour Relations Act, 1977, (2) The Fishing Industry (Collective Bargaining) Act, 1971, (3) The Public Service (Collective Bargaining) Act, 1973, (4) The Newfoundland Teacher (Collective Bargaining) Act, 1973, (5) The Occupational Health and Safety Act and (6) The Interns and Residents Collective Baragaining Act.

Under The Labour Relations Act, the Board has the responsibility for the administration of the provisions which concern (1) the certification of unions as the bargaining agent for the appropriate units of employees so that such agents may bargain collectively with the employers of the affected employees; (2) the issuing of orders of revocation of certification upon application by an interested party or parties in cases where certified unions cease to maintain a majority of the members in the appropriate units for which they were certified; (3) the termination of bargaining rights of unions who have been recognized voluntarily by the employer or employers in question who are party to collective agreements but who no longer represent a majority of the employees in the particular bargaining unit; (4) the writing into collective agreements of the procedures for the final settlement of disputes concerning the interpretation of clauses of collective agreements or the violation of such clauses; (5) the investigation of complaints referred to it by the Minister of Labour and Manpower that a party has failed to bargain collectively and make every reasonable effort to conclude a collective agreement; (6) the giving of consent to parties to a collective agreement that they may terminate an agreement within a period less than one year from its commencement; (7) the giving of consent to employers to alter rates of wages, or any other term or condition of employment of employees covered by an application for certification which is pending before the Board; (8) the issuance of orders declaring an undertaking for the construction of works for the development of a natural resource or the establishment of a primary industry to be a special project; (9) the accreditation of an employer's organization as the bargaining agent for employers in the appropriate sector of the construction industry so that such agents may bargain collectively with the bargaining agent or agents of their employees; and (10) the amending and varying of orders, decisions and certificates which have been issued by the Board.

The Board also has the responsibility for administering provisions similar to those mentioned above, under The Fishing Industry (Collective Bargaining) Act, 1971; and The Newfoundland Teachers (Collective Bargaining)Act, 1973; and The Public Service (Collective Bargaining) Act, 1973; and The Occupational Health and Safety Act; and The Interns and Residents Collective Bargaining Act. Under the Public Service (Collective Bargaining) Act, the Board is also responsible for the issuing of orders declaring certain employees within a bargaining unit or bargaining units to be essential employees for the health, safety or security of the public.

The Newfoundland Labour Relations Board has authority to determine the proper time for making application for certification, under certain conditions; to determine the appropriateness of a unit of employees for collective bargaining; to conduct representation votes among employees to determine whether bargaining agents have the support of a majority of employees affected; to reject as bargaining agents unions which are dominated or influenced improperly by employers; to determine who is a member in good standing of a union and to determine who is an employee or an employer within the meaning of the various Acts.

In addition, the Board has made rules prescribing the procedures to be followed in respect of the administrative functions of the Board. These Rules of Procedure includes for example provisions for determining a member in good standing of a trade union or association; a quorum of the Board; and, the powers and duties of the Chief Executive Officer and the Secretary of the Board.

The Board consists of five regular members; two representatives of employers; two representatives of employees, and an independent chairman. The personnel who served as regular members on the Board during 1984 were: R. Gosse and F. W. Russell, representing employers; G. Gillingham and J. Walsh, representing employees. Gordon G. Easton, Q.C., served as Chairman of the Board during 1984.

The Board is also comprised of a Vice-Chairman and four alternate members, two representatives of employers and two representatives of employees, who serve on the Board in the absence of regular members. During the year, under review, Charles W. White served as Vice-Chairman; W. A. Alcock, G. MacDonald, F. Bowdring and F. Taylor served as alternate representatives for employers and employees respectively.

The administrative duties and functions of the Board are supervised by the Chief Executive Officer with the aid of the Secretary. During 1984, J. M. Noel was the Chief Executive Officer and W. Fowler served as Secretary.

The full-time staff of the Board consists of four persons which includes the Chief Executive Officer and the Secretary, an Investigating Officer and Clerk-Stenographer.

Staff members of the Department of Labour and Manpower are seconded on a temporary basis to act as Investigating Officers and Returning Officers for the Board when required.

During the year, the Board held forty-two (42) days of meetings. Schedules detailing the activities of the Board are attached.

DATED at St. John's this 12th day of February, 1985, A.D.

Respectfully submitted,
Labour Relations Board

GORDON G. EASTON, Q.C.
CHAIRMAN

Schedule "A"

The Labour Relations Act

Statement of Proceedings Before The Board during the year 1984

Applications for Certification

1.	Number of Applications pending at 1 January, 1984	17	
2.	Number of Applications filed during the year	57	
3.	Total Applications for certification		74
4.	Number of Applications granted	33	
5.	Number of Applications rejected	17	
6.	Number of Applications withdrawn	8	
7.	Total Applications dealt with by the Board		58
8.	Number of Applications pending 31 December, 1984	16	

Applications for Revocation of Certification

1.	Number of Applications pending at 1 January, 1984	1	
2.	Number of Applications filed during the year	4	
3.	Total Applications for revocation of certification		5
4.	Number of Applications granted	0	
5.	Number of Applications rejected	2	
6.	Number of Applications withdrawn	0	
7.	Number of Applications lapsed	0	
8.	Total Applications dealt with by the Board		2
9.	Number of Applications pending at 31 December, 1984	3	

Miscellaneous Applications

1.	Applications pending at 1 January, 1984	21	
2.	Applications received under Section 18 - Reconsideration of Decision	18	
3.	Applications received requesting change name of trade union on certification order	5	
4.	Applications received requesting change name of employer on certification order	1	
5.	Applications received under Section 85 - Matter referred to Board by Arbitrator	7	
6.	Applications received under Section 89 - Transfer of Ownership	14	
7.	Applications received under Section 118 - Unfair Labour Practices	10	
8.	Applications received under Section 126 - Complaint against a bargaining agent for failure to act in good faith in handling of a grievance	7	
9.	Applications received under Section 69 - Determination of Special Project	0	
10.	Total Miscellaneous Applications		83
11.	Total Miscellaneous Applications dealt with by the Board		59
12.	Total Miscellaneous Applications pending at 31 December, 1984		24

Number of Representation Votes conducted in 1984	17
Approximate number of employees affected by certification orders issued in 1984	1,086

NOTE: Reasons for decision issued in 1984, with respect to Board decisions issued in 1983;

D.H. Electric Ltd., Sunnyside & I.B.E.W., Local 2330 Appendix 9

Cape Pine Fisheries Ltd. & N.F.F.A.W. Local 1252 Appendix 10

Schedule "B"

Labour Relations Act

Statement of Proceedings before the Board during 1984

Applications for Certification - Granted

1. International Union of Operating Engineers, Local 904 and Gold River Construction Limited, and Construction General Labourers' Rock and Tunnel Workers, Local 1208

Bargaining Unit

A unit of employees of Gold River Construction Limited comprising all employees involved in the operation and maintenance of heavy equipment, drilling and mining equipment save and except Office Staff, Non-working Foremen and those above the rank of Non-working Foremen and employees covered by subsisting collective agreements.

A hearing and a representation vote was held in connection with this case. There are 25 employees in the bargaining unit.

2. Communications Workers of Canada, Local 410 and Newfoundland Telephone Company Limited, St. John's.

Bargaining Unit

A unit of employees of Newfoundland Telephone Company Limited, St. John's, comprising all office and clerical employees of the Newfoundland Telephone Company Limited located in the Province of Newfoundland save and except all employees included in the existing Telephone Craft and Operator Services Bargaining Units, Executives, Managers, Assistant Managers, Supervisors, Foremen Executive Secretaries, Personnel Secretaries, Secretaries to the District Managers, Senior Engineers, Engineers, Engineering Associates, Engineering Assistants, Associates, Staff Assistants, Assistants, Buyers, Administrators, Chief Service Order Writers, Financial Analysts, Systems Specialists, Systems Programmers, Systems Trainees, Computer Console Operators (CISA), Internal Auditors, Contract Inspectors, Service Advisors, Co-ordinators, Communications Consultants including Account Representatives and Account Executives, Building Industry Consultants, Health Counsellors, Purchasing Agent, Logistics Manager, Medical Officer, Labour Relations Clerk, and those employees above the rank of Supervisor.

A representation vote was held in this case. There are 334 employees on the bargaining unit.

3. International Brotherhood of Electrical Workers, Local 2351 and Churchill Falls (Labrador) Corporation Limited, St. John's.

Bargaining Unit

A unit of employees of Churchill Falls (Labrador) Corporation Limited, St. John's, comprising all full-time and regular part-time employees save and except President, Vice-President of Operations and Engineering, Vice-President of Finance, Legal Counsel, Director of Industrial Relations and Administration, Assistant Corporate Secretary, Personnel Supervisor, Personnel Officer, Labour Relations Officer, Personnel Assistant, Controller, Treasurer, Manager of Commercial Services, Accounting Manager, General Accounting Supervisor, Reports and Budget Supervisor, Purchasing Supervisor, Payroll Supervisor, Site Accounting Supervisor, Materials Management Superintendent, Warehouse Supervisor, Transportation Co-Ordinator, Food Warehouse Supervisor, Department Store Supervisor, Grocery Store Supervisor, Hotel Supervisor, Meat Supervisor, Produce Supervisor, Manager of Engineering, Plant Manager, Maintenance Services Superintendent, Air Services Manager, Town Manager, Housekeeping, Line Maintenance Superintendent, Electrical Maintenance,, Superintendent, Mechanical Maintenance Superintendent, Mechanical Maintenance Supervisor, Chief Operator, Line Maintenance Supervisor, Operations Supervisors, Buildings and Recreation Superintendent, Fire/Security Chief, Municipal Services Supervisor, Buildings Supervisor, Recreation Director, Chief Aircraft Engineer, Chief Helicopter Pilot, Helicopter Pilots, Chief Fixed Wing Pilot, Fixed Wing Pilots, Aircraft Engineers,Mobile Equipment Supervisor, Garage Supervisor, Capital Works Supervisor, Plant Engineer, Senior Civil Engineer, Senior Mechanical Engineer, Civil Engineer, Water Resources Supervisor, Dyke Inspectors, Hydrology Technician, Hydrology Field Assistant, Communications Supervisor, Electrical Engineer, Protection and Control Supervisor, Draftsman, Secretary to the Vice-President of Operations and Engineering, Secretary to the Vice-President of Finance and Legal Counsel, Secretary to the Director of Industrial Relations and Administration (Personnel Department), Clerk Typists in the Personnel Department, Electrical Maintenance Supervisor, Non-working Foremen, those above the rank of Non-working Foremen, and employees covered by subsisting collective agreements. There are 48 employees in the bargaining unit.

A hearing was held in connection with this case.

4. Newfoundland Association of Public Employees, and Port au Port Roman Catholic School Board, Stephenville.

Bargaining Unit

A unit of employees of Port au Port Roman Catholic School Board, Stephenville, comprising all employees save and except Superintendent, Assistant Superintendent, Business Manager, Maintenance Supervisor, Confidential Secretary to the Superintendent, Non-working Foremen and those above the rank of Non-working Foremen and employees covered by subsisting collective agreements. There are 37 employees in the bargaining unit.

5. Canadian Paperworkers Union, Local #157, and Vanguard Paper Box Limited, Donovan's Industrial Park.

Bargaining Unit

A unit of employees of Vanguard Paper Box Limited, Donovan's Industrial Park comprising all employees save and except Plant Manager. There are 14 employees in the bargaining unit.

A hearing was held in connection with this case.

6. United Brotherhood of Carpenters and Joiners of America, Local 579, and Trend Construction Limited, St. John's.

Bargaining Unit

A unit of employees of Trend Construction Limited, St. John's comprising Carpenters, Carpenter Apprentices, and Working Carpenter Foremen. There are 9 employees in the bargaining unit.

A hearing was held in connection with this case.

7. International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 764 and Easteel Industries Limited, St. John's.

Bargaining Unit

A unit of employees of Easteel Industries Limited, St. John's comprising Ironworkers employed by the employer in the Province of Newfoundland. There are 37 employees in the bargaining unit.

8. International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 764 and E. F. Barnes Limited, St. John's.

Bargaining Unit

A unit of employees of E. F. Barnes Limited, St. John's, comprising Ironworkers employed by the employer in the Province of Newfoundland. There are 5 employees in the bargaining unit.

9. Industrial Union of Marine and General Workers of Canada, Local 20 and Royal Garage Limited, Salt Pond, Burin.

Bargaining Unit

A unit of employees of Royal Garage Limited, Salt Pond, Burin, comprising all employees save and except Manager, Service Manager, Parts Manager, Office Staff, Salesmen, Warranty Clerk, Non-working Foremen and those above the rank of Non-working Foremen. There are 9 employees in the bargaining unit.

10. Newfoundland Association of Public Employees, and Town Council of Nain.

Bargaining Unit

A unit of employees of Town Council of Nain comprising all employees save and except Town Manager, Non-working Foremen and those above the rank of Non-working Foremen. There are 5 employees in the bargaining unit.

11. Canadian Union of Public Employees, Local 706 and The City of Corner Brook.

Bargaining Unit

A unit of employees of The City of Corner Brook comprising all employees employed by the City at Humber Gardens save and except non-working foremen and those above the rank of non-working foremen. There are 21 employees in the bargaining unit.

12. International Union of Bricklayers and Allied Craftsmen, Newfoundland and Labrador, Local #1 and Reid Engineering and Construction Company Limited, Mount Pearl.

Bargaining Unit

A unit of employees of Reid Engineering and Construction Company Limited, Mount Pearl, comprising Masons and Mason Helpers. There are 8 employees in the bargaining unit.

A hearing was held in connection with this case.

Reasons for decision were issued in this case, and are attached as Appendix 1 of Schedule "B".

13. International Association of Bridge, Structural and Ornamental Iron Workers, Local 764 and Steelfab Limited, St. John's.

Bargaining Unit

A unit of employees of Steelfab Limited, St. John's, comprising Ironworkers. There are 4 employees in the bargaining unit.

14. International Brotherhood of Electrical Workers, Local 2330 and Island Electric Limited, St. John's.

Bargaining Unit

A unit of employees of Island Electric Limited, St. John's comprising Electricians, Electrician Apprentices and Working Electrician Foremen.

A representation vote was held in this case. There are 5 employees in the bargaining unit.

15. Canadian Paperworkers Union, Local 158, and Abitibi Price Inc., Grand Falls Division.

Bargaining Unit

A unit of employees of Abitibi Price Inc., Grand Falls Division, comprising Junior Machine Operator, Data Processing; Messenger; Stenographer; Junior Tabulating Clerk, Data Processing; Ozalid Machine Operator & File Clerk; Junior Draftsman, Class "B"; Invoice Clerk-Accounting; Payroll Clerk III-Grand Falls; Chief Stenographer; Cost Accounting Clerk ; Senior Machine Operator, Data Processing; Receiving Checker, Mill Stores; Stores Clerk II; Payroll Clerk, Botwood; Payroll Clerk II, Grand Falls; Junior Draftsman, Class "A";Laboratory Assistant; Maintenance Clerk, Mechanical Office; Statistical Clerk, Control Office; Dispatcher, G.F.C.R.; Maintenance Clerk, Electrical Office; Receiving & Shipping Clerk, Mill Stores; Stores Clerk I; Laboratory Assistant; Landed Cost of Goods Clerk; Records Clerk, Traffic; Benefits Clerk; Accounting Clerk and Cashier; Tabulating Clerk I, Data Processing; Tabulating Clerk II, Data Processing; Draftsman, Class "B"; Storekeeper, Botwood, Documentations, Claims & Reservations Clerk, Traffic; Payroll Clerk I, Grand Falls; Instrument Technicians, Customs & Insurance Clerk; Railway & Shipping Accountant; Production Program Clerk, Traffic, Draftsman, Class "A"; Chief Clerk, Mill Stores; Chief Clerk, Statistical Control Office; Senior Accountant; Senior Draftsmen, Class "B"; Senior Payroll Clerk; Mill & Construction Cost Clerk; Senior Draftsman, Class "A"; Accounting Clerk, Woods; Accounting & Statistics Clerk, Woods; Accounting & Stores Clerk, Woods; Cost Clerk, Woods; Scaler I; Scaler II; Scaler III; Scaler IV; Assistant Forestry Technician, 1st Year; Assistant Forestry Technician, 2nd year; Assistant Forestry Technician, 3rd year, Forestry Technician; Instrument Shop Leading Hand; Instrument Technician; Instrument Mechanic "A"; Instrument Mechanic "B": apprentices to these trades save and except Non-working Foremen and those above the rank of Non-working Foremen. There are 99 employees in the bargaining unit.

16. United Brotherhood of Carpenters and Joiners of America, Local Union 1009, and Dominion Bridge-Sulzer Inc.

Bargaining Unit

A unit of employees of Dominion Bridge-Sulzer Inc. comprising Millwrights, Millwright Apprentices and Working Millwright Foremen. There are 8 employees in the bargaining unit.

17. Transport and Allied Workers Union, Local 855 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Moffatt Brothers Moving and Storage, a division of Canadian Pacific Express and Transport Limited.

Bargaining Unit

A unit of employees of Moffatt Brothers Moving and Storage, a division of Canadian Pacific Express and Transport Limited comprising all full time and regular part-time employees of Moffatt Brothers Moving and Storage, a division of Canadian Pacific Express and Transport Limited working at and out of St. John's save and except Office and Clerical Staff, Sales Representatives, Dispatcher, Warehouse Supervisor, Non-working Foremen and those above the rank of Non-working Foremen.

A representation vote was held in this case. There are 16 employees in the bargaining unit.

18. International Association of Bridge, Structural Ornamental Iron Workers, Local 764, and Maloney Steel Limited, Nova Scotia.

Bargaining Unit

A unit of employees of Maloney Steel Limited, Nova Scotia, comprising Ironworkers. There are 8 employees in the bargaining unit.

19. Canadian Paperworkers Union, Local 159 and Newfoundland Containers Limited.

Bargaining Unit

A unit of employees of Newfoundland Containers Limited comprising all employees save and except Plant Manager, Maintenance Man, Non-Working Foremen and those above the rank of Non-working Foremen. There are 14 employees in the bargaining unit.

20. Newfoundland Fishermen, Food and Allied Workers, Local 1252 chartered by United Food and Commercial Workers' International Union, and Clarenville Ocean Products Limited, St. John's.

Bargaining Unit

A unit of employees of Clarenville Ocean Products Limited, St. John's, comprising all employees save and except Manager, Office Staff, Chief Engineer, Non-working Foremen and those above the rank of Non-working Foremen employed by the employer at its Greenspond fish plant.

A representation vote was held in this case. There are 170 employees in the bargaining unit.

21. United Steelworkers of America, Local 7144, and Liquid Air Inc., St. John's.

Bargaining Unit

A unit of employees of Liquid Air Inc., St. John's, comprising all office and technical employees of the Company save and except Office Manager, Sales Manager, Customer Services Supervisor, Sales Representatives, Production Superintendent, and employees covered by the order of certification issued by the Board on 20 October, 1971. There are 4 employees in the bargaining unit.

22. Newfoundland Association of Public Employees and Avalon Community Accommodations Board.

Bargaining Unit

A unit of employees of Avalon Community Accommodations Board comprising all full-time and regular part-time employees employed by the employer save and except Supervisor. There are 13 employees in the bargaining unit.

A hearing was held in connection with this case.

23. Transport and Allied Workers, Local 855 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Royal Garage Limited, St. John's.

Bargaining Unit

A unit of employees of Royal Garage Limited, St. John's comprising all employees of the Royal Garage Limited working as Service Writers, Car Rental Clerks and all Office Staff save and except Manager, Confidential Secretary, Computer Operator, and all employees covered by subsisting collective agreements. There are 13 employees in the bargaining unit.

24. International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 764, and Atlantic Fabricators and Erectors Limited, St. John's

Bargaining Unit

A unit of employees of Atlantic Fabricators and Erectors Limited, St. John's, comprising Ironworkers. There are 5 employees in the bargaining unit.

25. Newfoundland Fishermen, Food and Allied Workers, Local 1252, chartered by United Food and Commercial Workers International Union, and Petty Harbour Fisheries Limited.

Bargaining Unit

A unit of employees of Petty Harbour Fisheries Limited comprising all employees save and except Manager, Office Staff, Quality Control Supervisor, Non-working Foremen, and those above the rank of Non-working Foremen employed by the Company at its Petty Harbour fish plant. There are 77 employees in the bargaining unit.

26. International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 764, and Strescon Limited, St. John, N.B.

Bargaining Unit

A unit of employees of Strescon Limited, St. John, N.B., comprising Ironworkers. There are 5 employees in the bargaining unit.

27. International Union of Operating Engineers, Local 904, and Len Vardy Transport Limited, St. John's

Bargaining Unit

A unit of employees of Len Vardy Transport Limited, St. John's comprising all employees save and except Manager, Non-working Foremen and those above the rank of Non-working Foremen.

A representation vote was held in this case. There are 9 employees in the bargaining unit.

28. United Steelworkers of America, Local 7144, and Newfoundland Minerals Limited, Manuels.

Bargaining Unit

A unit of employees of Newfoundland Minerals Limited, Manuels comprising all employees save and except Manager, Office Staff, Lab Technicians, Non-working Foremen and those above the rank of Non-working Foremen. There are 23 employees in the bargaining unit.

29. International Association of Bridge, Structural and Ornamental Iron Workers, Local 764, and A. & R. Metals Limited

Bargaining Unit

A unit of employees of A. & R. Metals Limited comprising Iron Workers. There are 4 employees in the bargaining unit.

30. Local Union No. 355, Canadian Union of United Brewery Flour, Cereal, Soft Drink and Distillery Workers, and The Bond Hotel Company Limited, St. John's, trading under the firm name and style of The Lester Hotel.

Bargaining Unit

A unit of employees of The Bond Hotel Company Limited, St.John's trading under the firm name and style of The Lester Hotel comprising all employees save and except Hotel Manager, Assistant Hotel Manager, Comptroller, Chef, Banquet Manager, Lounge Manager, and Marketing Manager. There are 31 employees in the bargaining unit.

31. Bakery, Confectionery & Tobacco Workers International Union, Local 381 and General Bakeries Limited (Mammy's Division), St.John's

Bargaining Unit

A unit of employees of General Bakeries Limited (Mammy's Division), St. John's, comprising all office staff of General Bakeries Limited, (Mammy's Division), St. John's, located at Alexander Street and Hill O'Chips save and except Supervisor and those above the rank of Supervisor and employees covered by subsisting collective agreements. There are 12 employees in the bargaining unit.

32. Industrial Union of Marine and General Workers of Canada, Local No. 20, and Marystown Shipyard Limited

Bargaining Unit

A unit of employees of Marystown Shipyard Limited comprising all employees employed as Security Guards at the employer's premises at Marystown, Newfoundland, save and except Security Guard Supervisor and those above the rank of Security Guard Supervisor. There are 10 employees in the bargaining unit.

33. Newfoundland Association of Public Employees and The Burin Peninsula Ministerial Interfaith Children's Home (Grand Bank-Fortune, 1980) Incorporated.

Bargaining Unit

A unit of employees of The Burin Peninsula Ministerial Interfaith Children's Home (Grand Bank-Fortune, 1980) Incorporated comprising all employees save and except House Parent. There are 4 employees in the bargaining unit.

Applications for Certification - Rejected

1. Local Union No. 351, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers and Herb White, Distributor

Decision

The Board was satisfied that the Local Union No. 351, Canadian Union of United Brewery, Flour,Cereal, Soft Drink and Distillery Workers did not represent a majority of employees in the proposed bargaining unit.

A representation vote was conducted in this case.

2. Local Union No. 351, Canadian Union of United Brewery Flour, Cereal, Soft Drink and Distillery Workers and Eugene McGrath, Distributor

Decision

The Board was satisfied that Local Union No. 351, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers did not represent a majority of employees in the proposed bargaining unit.

A representation vote was conducted in this case.

3. Local Union No. 351, Canadian Union of United Brewery Flour, Cereal, Soft Drink and Distillery Workers and Bob Morrissey, Distributor

Decision

The Board was satisfied that Local Union No. 351, Canadian Union of United Brewery, Flour, Cereal, Soft Drink, and Distillery Workers did not represent a majority of employees in the proposed bargaining unit.

A representation vote was held in this case.

4. Local Union No. 351, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers and Kevin Williams, Distributor

Decision

The Board was satisfied that Local Union No. 351, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers did not represent a majority of employees in the proposed bargaining unit.

A representation vote was held in this case.

5. Local Union No. 351, Canadian Union of United Brewery Flour, Cereal, Soft Drink and Distillery Workers and Pat Hearn, Distributor

Decision

The Board was satisfied that Local Union No. 351, Canadian Union of Brewery, Flour, Cereal, Soft Drink and Distillery Workers did not represent a majority of employees in the proposed bargaining unit.

A representation vote was held in this case.

6. Local Union No. 351, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers and E. & H. Enterprises

Decision

The Board was satisfied that Local Union No. 351, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers did not represent a majority of employees in the proposed bargaining unit.

A representation vote was held in this case.

7. Local Union No. 351, Canadian Union of United Brewery Flour, Cereal, Soft Drink and Distillery Workers and K. & P. Enterprises Limited

Decision

The Board was satisfied that Local Union No. 351, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers did not represent a majority of employees in the proposed bargaining unit.

A representation vote was conducted in this case.

8. Construction General Labourers' Rock and Tunnel Workers, Local 1208, and Dalewood Contracting Limited, St. John's

Decision

The Board determined that there was a collective agreement in effect between Dalewood Contracting Limited, St. John's , and International Union of Bricklayers and Allied Craftsmen, Newfoundland and Labrador, Local #1, and that the application for certification was untimely pursuant to Section 36(4) of the Act

9. International Union of Bricklayers and Allied Craftsmen, Newfoundland and Labrador, Local 1 and Dalewood Contracting Limited, St. John's

Decision

The Board determined that there was a collective agreement in effect between Dalewood Contracting Limited, St. John's and International Union of Bricklayers and Allied Craftsmen, Newfoundland and Labrador, Local #1, and that the application for certification was untimely pursuant to Section 36(4) of the Act.

10. International Union of Bricklayers and Allied Craftsmen, Newfoundland and Labrador, Local #1 and Jack Green Limited, St. John's, and Construction General Labourers' Rock and Tunnel Workers, Local 1208.

Decision

The Board determined that there was a collective agreement in effect between Jack Green Limited, St. John's and International Union of Bricklayers and Allied Craftsmen, Newfoundland and Labrador, Local #1 and that the application for certification was untimely pursuant to Section 36(4) of the Act.

11. Construction General Labourers' Rock and Tunnel Workers, Local 1208 and Jack Green Limited, St. John's, and International Union of Bricklayers and Allied Craftsmen, Newfoundland and Labrador, Local #1

Decision

The Board determined that there was a collective agreement in effect between Jack Green Limited and Construction General Labourers', Rock and Tunnel Workers, Local 1208, and that the application for certification was untimely pursuant to Section 36(4) of the Act.

12. International Association of Bridge, Structural and Ornamental Iron Workers, Local Union No. 764 and Thomas Fuller Construction Co. (1958) Limited, St. John's.

Decision

The Board was satisfied that the employees requested were not employees of Thomas Fuller Construction Co. (1958) Limited, St. John's at the date of adjudication.

13. Canadian Union of Public Employees, Local 2099, Mount Pearl Municipal Workers Union and Mount Pearl Minor Hockey Association.

Decision

The Board was satisfied that the Canadian Union of Public Employees, Local 2099, Mount Pearl Municipal Workers Union did not have the support of a majority of employees in the proposed bargaining unit.

A representation vote was conducted in this case.

14. Newfoundland Association of Public Employees and E. W. Harvey Limited, St. John's

Decision

The Board was satisfied that the Newfoundland Association of Public Employees did not represent a majority of the employees in the proposed bargaining unit.

A representation vote was conducted in this case.

15. International Brotherhood of Electrical Workers, Local 2330, and Squires Mechanical Limited

Decision

The Board determined that the proposed bargaining unit was not appropriate for collective bargaining since it had only one employee.

16. Transport and Allied Workers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Truck Bodies (1982) Limited

Decision

The Board was satisfied that the Transport and Allied Workers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America did not represent a majority of the employees in the proposed bargaining unit.

A representation vote was conducted in this case.

17. Newfoundland Fishermen, Food and Allied Workers, Local 1252, chartered by United Food and Commercial Workers International Union, and Clarenville Ocean Products Limited

Decision

The Board was satisfied that Newfoundland Fishermen, Food and Allied Workers, Local 1252, chartered by United Food and Commercial Workers International Union did not represent a majority of the employees in the proposed bargaining unit.

A representation vote was conducted in this case.

Applications for Certification - Withdrawn

1. Local Union No. 2330 of the International Brotherhood of Electrical Workers and Folmar Electric Limited, St. John's
2. Newfoundland Association of Public Employees and Caribou Canteen, Waterford Hospital
3. Industrial Union of Marine and General Workers of Canada, Local 20, and Marystown Shipyard Limited
4. International Brotherhood of Electrical Workers, Local 2330 and Squires Development Limited, St. John's
5. International Brotherhood of Electrical Workers, Local 2330, and Brigus Electric, St. John's.
6. Newfoundland Association of Public Employees and Marystown Shipyard Limited

7. United Brotherhood of Carpenters and Joiners of America, Local 579, and Stokes Management Limited, St. John's

8. United Brotherhood of Carpenters and Joiners of America Local 579, and Solid Holdings Limited, Corner Brook.

Applications for Certification - Pending

1. Construction and General Labourers' Union, Rock and Tunnel Workers, Local 1208 and Canadian Mine Development, Jackson's Arm.

2. International Union of Operating Engineers, Local 904 and Canadian Mine Development, Jackson's Arm.

3. International Association of Heat and Frost Insulators and Asbestos Workers, Local 137 and Shoal Enterprises Limited, Paradise

4. Newfoundland Fishermen, Food and Allied Workers, Local 1252 and Cape Pine Fisheries Limited, Witless Bay

5. Newfoundland Fishermen, Food and Allied Workers, Local 1252 and Cape Pine Fisheries Limited, Bay Bulls

6. Sheet Metal Workers International Association, Local 512 and J. C. Pratt (1974) Limited, St. John's

7. International Association of Machinists and Aerospace Workers, Lodge 927 and Modern Building Cleaning (Nfld.) Limited, St. John's

8. Newfoundland Fishermen, Food and Allied Workers, Local 1252, and Petty Harbour Fisheries Limited, Petty Harbour

9. United Brotherhood of Carpenters and Joiners of America, Local 579 and N.D. Dobbin Limited, St. John's

10. United Steelworkers of America, Local 6480 and Carol Wabush Co-op Society Limited, Wabush

11. United Brotherhood of Carpenters and Joiners of America, Local 1009, and B.K.R. Mechanical, St. John's

12. Local Union No. 2330, International Brotherhood of Electrical Workers and E.F.C.O. Enterprises Limited, Stephenville.

13. Retail, Wholesale and Department Store Union, Local 597 and Royal Grocery Limited, St. John's

14. United Brotherhood of Carpenters and Joiners of America, Local 597 and Newfoundland Zinc Mines, Daniels Harbour

15. International Union of Operating Engineers, Local 904, and Solid Holdings Limited, Corner Brook.

16. Newfoundland Association of Public Employees and Town of Portugal Cove, Portugal Cove.

Applications for Revocation of Certification - Rejected

1. Consolidated Rambler Mines Limited, Baie Verte, and United Steelworkers of America, Local 8484

Decision

The Board, following investigation and consideration of the representations of the interested parties, saw no reason to revoke the certification order.

Reasons for decision were issued and are attached as Appendix 2 of Schedule "B".

2. Consolidated Rambler Mines Limited, Baie Verte, and United Steelworkers of America, Local 7190

Decision

The Board, following investigation and consideration of the representations of the interested parties, saw no reason to revoke the certification order.

Reasons for decision were issued and are attached as Appendix 2 of Schedule "B".

Applications for Revocation of Certification - Pending

1. Harvey Autocarriers Limited and Transport and Allied Workers, Local 855

2. Diane Roche, et al (Employees of Newfoundland and Labrador Nurses' Union) and Transport and Allied Workers, Local 855.

3. Terry Kettle et al and Retail, Wholesale and Department Store Union, Local 597 and A. J. Coleman and Sons Limited

Applications under Section 18 - Reconsideration and Amendments of Decisions

1. Newfoundland Association of Public Employees and Canadian Red Cross Blood Transfusion Services, St. John's

Decision

The Board, following investigation and consideration of the representations of the interested parties was satisfied that the said classification was appropriate to be included in the bargaining unit, and ordered that the classification of Lab Helper/ Clinic Assistant be included in the bargaining unit.

A hearing was held in connection with this case.

Reasons for decision were issued and are attached as Appendix 3 of Schedule B.

2. Office and Professional Employees, International Union Local 255, and Abitibi-Price Inc., Grand Falls

Decision

The Board, following investigation and consideration of the representations of the interested parties determined that the classification of Operations Planner was not appropriate to be included in the bargaining unit and rejected the application.

A hearing was held in connection with this case.

Reasons for decision were issued in this case and are attached as Appendix 4 of Schedule B.

3. Regional Council of the Newfoundland Conference of the United Church of Canada and Canadian Union of Public Employees, Local 2693

Decision

The officer assigned to investigate the application reported that the matter had been settled and the Labour Relations Board removed the application from its agenda.

4. Town of Paradise and Newfoundland Association of Public Employees

Decision

The Board, following investigation and consideration of the representations of the interested parties saw no reason to amend the order of 29 June, 1983 and rejected the application.

A hearing was held in connection with this case.

5. E. & H. Enterprises and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 351

Decision

The Board, following consideration of the representations of the interested parties, saw no reason to review, reconsider, or rescind its decision of 16 January, 1984 and rejected the application.

6. Eugene McGrath, Distributor and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 351

Decision

The Board, following consideration of the representations of the interested parties saw no reason to review, reconsider, or rescind its decision of 16 January, 1984, and rejected the application.

7. Bob Morrissey, Distributor and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 351

Decision

The Board, following consideration of the representations of the interested parties saw no reason to review, reconsider or rescind its decision of 16 January, 1984 and rejected the application.

8. K. & P. Enterprises Limited and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 351

Decision

The Board, following consideration of the representations of the interested parties saw no reason to review, reconsider or rescind its decision of 16 January, 1984, and rejected the application.

9. Pat Hearn, Distributor, and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 351

Decision

The Board, following consideration of the representations of the interested parties saw no reason to review, reconsider or rescind its decision of 16 January, 1984, and rejected the application.

10. Newfoundland Association of Public Employees and Canadian Red Cross Blood Transfusion Service, St. John's

Decision

The Board, following investigation and consideration of the representations of the interested parties ordered that the certification order issued to Newfoundland Association of Public Employees on the 12th day of October, 1976, affecting Canadian Red Cross Blood Transfusion Service, St. John's , be amended to include Temporary Employees.

11. Herb White, Distributor and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers Local 351

Decision

The Board, following consideration of the representations of the interested parties saw no reason to review, reconsider or rescind its decision of 16 January, 1984 and rejected the application.

12. Churchill Falls (Labrador) Corporation Limited, St.John's and International Brotherhood of Electrical Workers, Local 2351

Decision

The Board, following consideration of the representations of the interested parties saw no reason to amend its order of 16 January, 1984, and rejected the application.

A hearing was held in connection with this case.

13. Calvin Tremblett, et al, and United Steelworkers of America, Local 5795 and Iron Ore Company of Canada

Decision

The Board, following investigation and consideration of the representations of the interested parties saw no reason to amend its order and rejected the application.

14. Newfoundland Association of Public Employees and Blue Crest Inter-Faith Home, Grand Bank

Decision

The Board, following investigation and consideration of the representations of the interested parties saw no reason to amend its order of 9 November, 1977 and rejected the application.

15. Jerry Fudge, et al and Canadian Union of Public Employees, Local 706 and City of Corner Brook

Decision

The Board, following investigation and consideration of the representations of the interested parties saw no reason to amend its certification order and rejected the application.

16. Newfoundland Containers Limited and Canadian Paperworkers Union, Local 159

Decision

The Board, following consideration of the evidence adduced at the hearing, advised the parties that it was not prepared to rescind its order of 30 May, 1984, and rejected the application.

A hearing was held in connection with this case.

17. City of Corner Brook Transit Workers and Canadian Union of Public Employees, Local 706 and City of Corner Brook

Decision

The Board, following consideration of the representations of the interested parties saw no reason to exclude the transit workers from the bargaining unit, and rejected the application.

18. Roman Catholic School Board, St. John's and Canadian Union of Public Employees, Local 1560

Decision

The officer assigned to investigate the application reported that the parties had reached an agreement and the Board removed the matter from the agenda.

19. Newfoundland Association of Public Employees and Blue Crest Interfaith Senior Citizens Home, Grand Bank

Decision

The Board considered the representations of the interested parties but noted that the Blue Crest Interfaith Home comes within the ambit of the Public Service (Collective Bargaining) Act, 1973 therefore this application was rejected.

The Board notified the parties that upon receipt of an application pursuant to the Public Service (Collective Bargaining) Act it would give consideration to amending the certification order.

Applications Pending Before the Board

1. Town of Paradise, Paradise and Newfoundland Association of Public Employees
2. United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada, Local 740 and Sooley's Plumbing and Heating, St. John's.
3. Retail, Wholesale and Department Store Union, Local 597 and Eastern Drug Services Limited, Donovans Industrial Park, St. John's

Application to Change Name or Affiliation of Trade Union (Section 91)

1. Communications, Electronic, Electrical, Technical and Salaried Workers of Canada, Local 410, and Newfoundland Telephone Company Limited, St. John's

Decision

The Board, ordered that the certification orders issued to Communications Workers of Canada, Local 410 on the 10th day of August, 1983, and on the 25th day of January, 1984, affecting Newfoundland Telephone Company Limited, St. John's, be amended by deleting Communications Workers of Canada, Local 410, and substituting therefor Communications, Electronic, Electrical, Technical and Salaried Workers of Canada, Local 410.

2. United Steelworkers of America, Local Union 9097, and Newfoundland Hardwoods Limited, Clarenville.

Decision

The Board, ordered that the certification order issued to Local No. 24703, Clarenville District Protective Workers on the 14th day of June, 1955, affecting Newfoundland Hardwoods Limited, Clarenville, be amended by deleting Local No. 24703 Clarenville, District Protective Workers and substituting therefor United Steelworkers of America, Local Union 9097.

Applications Pending Before the Board

1. Soft Drink Workers, Local Union No. 355 of the Hospitality and Service Workers' Union and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 355, and Wometco Newfoundland Limited and The Bond Hotel Company Limited trading under the firm and style of The Lester Hotel, St. John's.

2. Soft Drink and Bakery Workers, Local Union No. 353 affiliated with the Hospitality and Service Workers Union and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 353 and Browning Harvey Limited and West Coast Bakery Limited, Corner Brook.

3. Brewery Worker's Local Union No. 351, affiliated with the Hospitality and Service Worker's Union and Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 351 and Labatt Brewery Company Limited.

Application to Change Name of Employer on Certification Order

1. Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, Humberview Lodge 267, and Clarke Transport Canada Inc.

Decision

The Board, ordered that the certification order issued by the Board on the 22nd day of January, 1969, to Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, Humberview Lodge 267 affecting Western Transit Limited, Corner Brook, be amended by deleting Newfoundland Transport Limited and substituting therefor Clarke Transport Canada Inc.

Applications pursuant to Section 85 of the Labour Relations Act

1. Frederick R. Woolridge, Q.C.; William R. Purdy, and Fred Bowdring, Arbitration Board, and International Brotherhood of Electrical Workers, Local 2330 and Dominion Engineering Company Limited.

Decision

The Board after considering the representations of the interested parties determined that there was no collective agreement in effect between International Brotherhood of Electrical Workers, Local 2330 and Dominion Engineering Company Limited with respect to work done on a generator at the Churchill Falls, Labrador generating station, August to December, 1983.

A hearing was held in connection with this case.

Reasons for decision were issued in this case and are attached as Appendix 5 of Schedule B.

2. Jerome W. Dinn and Sheet Metal Workers International Association, Local 512, and Beck Construction Limited, St. John's

Decision

The Board considered the representations of the interested parties and determined that there was no collective agreement in effect between Sheet Metal Workers International Association, Local 512 and Beck Construction Limited, St. John's.

A hearing was held in connection with this case.

Reasons for decision were issued in this case and are attached as Appendix 6 of Schedule B.

3. H. Noseworthy and United Association of Journeymen and Apprentices of the Plumbing Industry of the United States and Canada, Local 740, and Sooley's Plumbing and Heating Limited.

Decision

The Board considered the representations of the interested parties and determined that there was no collective agreement in effect between United Association of Journeymen and Apprentices of the Plumbing Industry of the United States and Canada, Local 740 and Sooley's Plumbing and Heating Limited.

A hearing was held in connection with this case.

Applications Pending Before The Board

1. United Brotherhood of Carpenters and Joiners of America, Local 579 and Bradco Construction Limited and The Newfoundland Construction Labour Relations Association

2. H. Noseworthy and United Steelworkers of America and Consolidated Rambler Mines Limited

3. H. Noseworthy and Retail, Wholesale and Department Store Union, Local 597 and Central Trust Company Corner Brook

4. H. Noseworthy and Transport and Allied Workers, Local 855 and Moffatt Brothers Moving and Storage Limited, St. John's

5. H. Noseworthy and International Union of Operating Engineers, Local 904 and N. & L. Construction Limited, Stephenville

Applications pursuant to Section 89 of The Labour Relations Act

1. United Brotherhood of Carpenters and Joiners of America, Local 579 and Tri-City Construction Limited, and Sherwood Construction Limited

Decision

The Board following investigation and consideration of the representations of the interested parties, was satisfied that there was a transfer within the meaning of Section 89 of the Act between Tri-City Construction Limited and Sherwood Construction Limited and ordered that the application for certification and subsequent certification order applied to and is binding upon Sherwood Construction Limited.

A hearing was held in this case.

Reasons for decision were issued (January 8, 1985) and are attached as Appendix 8 of Schedule B.

2. International Union of Operating Engineers, Local 904 and Pinsent Construction Company Limited and Pinsent Concrete Limited.

Decision

The Board, following investigation and consideration of the representations of the interested parties determined there was no transfer within the meaning of Section 89 of the Act but had also determined that Pinsent Concrete Limited was bound by the collective agreement in effect between International Union of Operating Engineers, Local 904 and Pinsent Construction Company Limited and ordered that the collective agreement effective October 7, 1983 to April 30, 1985, between International Union of Operating Engineers, Local 904 and Pinsent Construction Company Limited is binding upon Pinsent Concrete Limited.

A hearing was held in connection with this case.

3. Canadian Union of Public Employees, Local 1644, and Grenfell Handicrafts

Decision

The Board, following investigation and consideration of the representations of the interested parties determined that there was a sale pursuant to Section 89 of the Act between The International Grenfell Association and Grenfell Handicrafts and ordered that Grenfell Handicrafts was bound by the collective agreement in effect between The International Grenfell Association and Canadian Union of Public Employees, Local 1644, effective from 1 January, 1983 to 31 March, 1984.

4. United Food and Commercial Workers Union, Local 1973B, and Carol-Wabush Co-operative Society Limited, Labrador City

The application was withdrawn.

5. United Steelworkers of America, Local 7721 and Royal Trust Corporation of Canada

The application was withdrawn.

6. United Brotherhood of Carpenters and Joiners of America, Local 579 and Solid Holdings Limited, Corner Brook.

The application was withdrawn.

7. United Brotherhood of Carpenters and Joiners of America, Local 579 and Dorset Construction Limited, Corner Brook

The application was withdrawn.

8. United Brotherhood of Carpenters and Joiners of America, Local 579, and Stokes Management Limited, St. John's

   The application was withdrawn.

Applications Pending Before The Board

1. Newfoundland Fishermen, Food and Allied Workers, Local 1252 and Atlantic Fisheries Limited.
2. International Association of Machinists and Aerospace Workers and Atlantic Concrete Limited, Corner Brook.
3. United Brotherhood of Carpenters and Joiners of America, Local 579 and Bradco Construction Limited and N. D. Dobbin Limited, St. John's.
4. International Union of Operating Engineers, Local 904 and 578730 Ontario Limited.
5. Construction and General Labourers' Rock and Tunnel Workers, Local 1208 and 578730 Ontario Limited
6. Canadian Union of Public Employees, Local 1270 and St. Clare's Mercy Hospital, St. John's.
7. Canadian Union of Public Employees, Local 1270 and Salvation Army Grace General Hospital, St.John's.
8. Transport and Allied Workers, Local 855 and Offshore Personnel Limited, 1984, St. John's.
9. United Brotherhood of Carpenters and Joiners of America, Local 579 and N & L Construction Limited, Stephenville

Applications Under Section 118
Unfair Labour Practices

1. Newfoundland Fishermen, Food and Allied Workers, Local 1252, and Cape St. Mary's Fisheries Limited and Patrick Quinlan

Decision

The Board, was satisfied that Cape St. Mary's Fisheries Limited and Patrick Quinlan violated Section 24(1) of the Act when Beverly Butler and Marilyn Crawley were dismissed and ordered pursuant to Section 119 of the Labour Relations Act, 1977, that Cape St. Mary's Fisheries and Patrick Quinlan;

(1) Reinstate Beverly Butler and Marilyn Crawley in their employment with Cape St. Mary's Fisheries Limited and Patrick Quinlan in their positions held prior to dismissal.

(2) Compensate Beverly Butler and Marilyn Crawley for wages and other employee benefits lost from 6th of April, 1983 and ending upon the date of reinstatement less any income received during the period from dismissal to reinstatement.

(3) The Board will retain jurisdiction on the matter of compensation in the event that the parties are unable to agree on the amount.

A hearing was held in connection with this case.

Reasons for decision were issued and are attached as Appendix 8 of Schedule B.

2. Kenneth Critch, Douglas Didham, Gail Murray, James Bonia, Michael Meaney, Douglas Molloy, Karen Jefford, Thomas McCarthy, Patrick Tobin, David Drohan, and Gerald Malone and Jones Construction Limited, Pasadena.

Decision

The Board on the 4th day of November, 1983, ordered that Jones Construction Limited, Pasadena, reinstate Kenneth Critch, Douglas Didham, Gail Murray, James Bonia, Michael Meaney, Douglas Molloy, Karen Jefford, Thomas McCarthy, Patrick Tobin, David Drohan and Gerald Malone and the Board retained jurisdiction on the matter of compensation, subsequently the Board, determined that Kenneth Critch, Douglas Didham, Gail Murray, James Bonia, Michael Meaney, Douglas Molloy, Karen Jefford, Thomas McCarthy, Patrick Tobin, David Drohan, and Gerald Malone are entitled to compensation and ordered that Jones Construction Limited, Pasadena, compensate the applicants as set out below:

Kenneth Critch	$7,450.00
Douglas Didham	5,390.00
Gail Murray	6,545.00
James Bonia	2,200.00
Michael Meaney	7,550.00
Douglas Molloy	3,637.00
Karen Jefford	3,276.44
Thomas McCarthy	4,462.50
Patrick Tobin	1,837.50
David Drohan	5,610.00
Gerald Malone	1,925.00

A hearing was held in connection with this matter.

3. Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 351 and E. & H. Enterprises

Decision

The Board was satisfied that E. & H. Enterprises violated Section 25(2) of the Act when Bruce Tizzard and David Hodder were dismissed and ordered pursuant to Section 119 of The Labour Relations Act, 1977, that E. & H. Enterprises:

(1) Reinstate Bruce Tizzard and David Hodder in their employment with E. & H. Enterprises in their positions held prior to dismissal.

(2) Compensate Bruce Tizzard and David Hodder for wages and other employee benefits lost from the date of dismissal and ending upon the date of reinstatement less any income received during the period from dismissal to reinstatement.

(3) The Board will retain jurisdiction on the matter of compensation in the event that the parties are unable to agree on the amount.

A hearing was held in connection with this case.

4. Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 351, and Kevin Williams, Distributor.

Decision

The Board, was satisfied that Kevin Williams, Distributor, violated Section 25(2) of the Act when Jack Lee, Michael Mealey, Dan Myler and Brian Lee were dismissed and ordered pursuant to Section 119 of The Labour Relations Act, 1977, that Kevin Williams, Distributor:

(1) Reinstate Jack Lee, Michael Mealey, Dan Myler, and Brian Lee in their employment with Kevin Williams, Distributor, in their positions held prior to dismissal.

(2) Compensate Jack Lee, Michael Mealey, Dan Myler, and Brian Lee for wages and other employees benefits lost from the date of dismissal and ending upon the date of reinstatement less any income received during the period from dismissal to reinstatement.

(3) The Board will retain jurisdiction on the matter of compensation in the event that the parties are unable to agree on the amount.

A hearing was held in connection with this case.

5. Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 351, and Pat Hearn, Distributor.

Decision

The Board, was satisfied that Pat Hearn, Distributor violated Section 25(2) of the Act when Gary Tracey, John Murphy, and John Hearn were dismissed and ordered pursuant to Section 119 of The Labour Relations Act, 1977, that Pat Hearn, Distributor:

(1) Reinstate Gary Tracey, John Murphy,

and John Hearn in their employment with Pat Hearn, Distributor, in their positions held prior to dismissal.

(2) Compensate Gary Tracey, John Murphy, and John Hearn for wages and other employee benefits lost from the date of dismissal and ending upon the date of reinstatement less any income received during the period from dismissal to reinstatement.

(3) The Board will retain jurisdiction on the matter of compensation in the event that the parties are unable to agree on the amount.

A hearing was held in connection with this case.

6. Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 351, and Bob Morrissey, Distributor.

Decision

The Board, was satisfied that Bob Morrissey, Distributor violated Section 25(2) of the Act when Randy Tobin was dismissed and ordered pursuant to Section 119 of The Labour Relations Act, 1977, that Bob Morrissey, Distributor:

(1) Reinstate Randy Tobin in his employment with Bob Morrissey, Distributor in the position held prior to dismissal.

(2) Compensate Randy Tobin for wages and other employee benefits lost from the date of dismissal and ending upon the date of reinstatement less any income received during the period from dismissal to reinstatement.

(3) The Board will retain jurisdiction on the matter of compensation in the event that the parties are unable to agree on the amount.

A hearing was held in connection with this case.

7. Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 351, and Herb White, Distributor.

Decision

The Board was satisfied that Herb White, Distributor, violated Section 25(2) of the Act when Stephen Pilgrim and John Hayes were dismissed and ordered pursuant to Section 119 of The Labour Relations Act, 1977, that Herb White, Distributor:

(1) Reinstate Stephen Pilgrim and JOhn Hayes in their employment with Herb White, Distributor, in their positions held prior to dismissal.

(2) Compensate Stephen Pilgrim and JOhn Hayes for wages and other employee benefits lost from the date of dismissal and ending upon the date of reinstatement less any income received during the period from dismissal to reinstatement.

(3) The Board will retain jurisdiction on the matter of compensation in the event that the parties are unable to agree on the amount.

A hearing was held in connection with this case.

8. Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 351, and Eugene McGrath, Distributor.

Decision

The Board, was satisfied that Eugene McGrath, Distributor violated Section 25(2) of the Act when Michael Dawe and Craig Walsh were dismissed and ordered pursuant to Section 119 of The Labour Relations Act, 1977, that Eugene McGrath, Distributor:

(1) Reinstate Michael Dawe and Craig Walsh in their employment with Eugene McGrath, Distributor, in their positions held prior to dismissal.

(2) Compensate Michael Dawe and Craig Walsh for wages and other employee benefits lost from the date of dismissal and ending upon the date of reinstatement less any income received during the period from dismissal to reinstatement.

(3) The Board will retain jurisdiction on the matter of compensation in the event that the parties are unable to agree on the amount.

A hearing was held in connection with this case.

9. Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, Local 351, and K. & P. Enterprises Limited.

Decision

The Board, was satisfied that K. & P. Enterprises Limited violated Section 25(2) of the Act when Sean Tracey was dismissed and ordered pursuant to Section 119 of The Labour Relations Act, 1977, that K. & P. Enterprises Limited:

(1) Reinstate Sean Tracey in his employment with K. & P. Enterprises Limited in the position held prior to dismissal.

(2) Compensate Sean Tracey for wages and other employee benefits lost from the date of dismissal and ending upon the date of reinstatement less any income received during the period from dismissal to reinstatement.

(3) The Board will retain jurisdiction on the matter of compensation in the event that the parties are unable to agree on the amount.

A hearing was held in connection with this case.

10. Industrial Union of Marine and General Workers of Canada, Local 20 and Royal Garage Limited, Burin.

Decision

The officer assigned to investigate this complaint reported that it had been settled and the Board removed it from the agenda.

11. Newfoundland Association of Public Employees and E.W. Harvey Limited, St. John's

Decision

The officer assigned to investigate this complaint reported that it had been settled and the Board removed it from the agenda.

12. Newfoundland Association of Public Employees and
E.W. Harvey Limited, St. John's

Decision

The officer assigned to investigate this complaint reported that it had been settled and the Board removed it from the agenda.

13. Newfoundland Association of Public Employees and
Town of Paradise

Decision

The Board was satisfied that The Town of Paradise did not violate the Act and ordered that the application be rejected.

A hearing was held in connection with this case.

14. United Brotherhood of Carpenters and Joiners of
America, Local 579, and Tri-City Construction Limited
and Sherwood Construction Limited

Decision

The Board was satisfied that Tri-City Construction Limited and Sherwood Construction Limited did not violate the Act and ordered that the application be rejected.

A hearing was held in connection with this case.

15. James A. Skinner and Shannahan's Investigation &
Security Limited, St.John's

Decision

The Board was satisfied that Shannahan's Investigation & Security Limited, St. John's did not violate Sections 24 and 25 of the Act when James A. Skinner was dismissed and ordered that the complaint be rejected.

16. International Association of Machinists and Aerospace
Workers, Local Lodge 927, and Bordeaux Maintenance
Services (Maritime) Limited

Decision

The Board was satisfied that Bordeaux Maintenance Services (Maritime) Limited did not violate Section 75(a) of the Act and ordered that the complaint be rejected.

A hearing was held in connection with this case.

17. United Steelworkers of America and H. J. O'Connell Construction Limited, Wabush

The complaint was withdrawn.

18. Newfoundland Association of Public Employees and The Town of Lewisporte

The complaint was withdrawn.

Complaints Pending before the Board

1. United Brotherhood of Carpenters and Joiners of America, Local 579, and T. & G. Woodworkers Limited, Appleton.
2. Newfoundland Fishermen, Food and Allied Workers, Local 1252 and Cape Pine Fisheries Limited, Witless Bay
3. Transport and Allied Workers, Local 855 and Moffatt Brothers Moving and Storage Limited, St. John's.

Applications under Section 126 - Complaint Against a Bargaining Agent for Failure to Act in Good Faith in Handling a Grievance

1. Elaine Buckle, et al, and Canadian Union of Public Employees, Local 488

Decision

The Board considered the complaint and decided that it did not have jurisdiction to deal with it under the Labour Relations Act, 1977, since jurisdiction for hospital labour relations falls under the Public Service (Collective Bargaining) Act, 1973.

The Board noted that should a complaint be filed pursuant to the Public Service (Collective Bargaining) Act it would be processed.

2. Roland J. Cooper, and Canadian Union of Public Employees, Local 2300

Decision

The Board was satisfied that Canadian Union of Public Employees, Local 2300, did not fail to act in good faith in the handling of a grievance Roland J. Cooper had against Notre Dame Integrated School Board and rejected the application.

3. William LeGrow and Canadian Union of Public Employees, Local 569

Decision

The Board was satisfied that Canadian Union of Public Employees, Local 569 did not fail to act in good faith in the handling of a grievance William LeGrow had against the City of St. John's and rejected the application.

A hearing was held in connection with this case.

4. Robert Woodfine and Newfoundland Association of Public Employees.

Decision

The Board was satisfied that Robert Woodfine had the support of the Newfoundland Association of Public Employees in this case and rejected the application.

5. Norman Kittinger and The Amalgamated Transit Union, Local 1462

Decision

The Board held a hearing in this case. The applicant (Norman Kittinger) did not appear or have a reprsentative appear, therefore the Board ordered that the application be rejected.

A hearing (unattended by the Applicant) was held in this case.

6. Charles L. Luby and Sheet Metal Workers International Association, Local 512

Decision

The Board was satisfied that Sheet Metal Workers International Association, Local 512, did not fail to act in good faith in the handling of a grievance Charles L. Luby had against Simon Lono Limited, and rejected the application.

7. Gerald LeGrow and Transport and Allied Workers Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America

Decision

The Board was satisfied that Transport and Allied Workers, Local 855, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America did not fail to act in good faith in the handling of a grievance Gerald LeGrow had against Royal Garage Limited, St. John's; and rejected the application.

8. Ronald Hughes and Jeff Reid and Construction General Labourers' Rock and Tunnel Workers, Local 1208.

The matter was lapsed.

Applications Under Section 69 - Determination of Special Projects

1. Gold River Construction Limited and Newfoundland and Labrador Hydro, et al.

The matter is pending before the Board.

Appendix 1, Schedule B

IN THE MATTER OF
The Labour Relations Act, 1977

- and -

International Union of Bricklayers
and Allied Craftsmen, Newfoundland
and Labrador, Local # 1
("the Union") Applicant

- and -

Reid Engineering & Construction
Company Limited ("the Employer") Respondent

BEFORE: Gordon G. Easton, Q.C., Chairman
F.W. Russell and G. Gillingham, Members

R. Earle for the applicant.
W. Mackillop for the respondent.

DECISION:

This is an application for certification received from International Union of Bricklayers and Allied Craftmen, Newfoundland and Labrador, Local # 1 ("the Union") for a unit of employees of Reid Engineering & Construction Company Limited ("the employer").

The employer's primary argument is that the persons in the proposed bargaining unit are independent contractors and are not employees of the company.

Evidence before the Board reveals that the company is a general contractor that had performed block and brick work on a number of sites including the General Supermarket on Torbay Road. The persons who are the subject of this application were employed by the latter. It appears that the company had assumed the role of general contractor on the General Supermarket job and had attempted to secure the services of a masonry contractor to do the masonry work on the building. This work consisted mainly of laying of concrete block. The masonry contractor apparently was unable to accept the work but did suggest the names of two masons, Roland Butler and Tom Mercer. Following discussions with Mr. Reid, owner of the company, Messrs. Butler and Mercer agreed to lay block for one dollar a block with payment to be made upon presentation of an invoice.

As indicated earlier Mr. Reid, through the company or a related company, had employed a number of other masons. Those masons had worked under similar circumstances as Messrs. Butler and Mercer had agreed to. Two of these masons, Morris Hunt and John Wakely had worked with Mr. Reid on previous occasions. Both of these masons obtained work on the General site and agreed to lay block at one dollar a block.

It appears that the masons worked in teams and generally with persons they had worked with in the past. The evidence before the Board, although not entirely clear, suggests that there was a need for extra masons on the job site. The masons that were on the job contacted a couple of their friends and at peak there were up to eight masons on the job. The evidence also reveals that the masons did hire a labourer, on a casual basis, to assist them. The labourer was paid cash by the masons from money received from the company.

The company provided all of the material required for the job. The masons supplied their own hand tools which apparently is a standard practice in the trade. The company supplied a cement mixer but did charge the masons for its use. The employer supplied cover and heat for the site when it was required and provided the scaffolding. It appears that the masons supplied their own hand tools and their labour on the job.

Directions and control of the masons on the job were minimal. The masons were all experienced workers and as such needed little supervision. The job was visited by Mr. Reid regularly and the masons gave evidence that he would give any directions that were needed. The company's superintendent on the job also provided direction when required. Although there was not specific working hours, the masons indicated that they worked when the weather permitted. One of the masons indicated that he had only taken one half day while he worked on the job.

The masons generally revealed that they worked subject to weather conditions and on at least one occasion Mr. Reid requested that the work be speeded up.

The company paid the masons upon receipt of an invoice. Separate cheques were issued to each of the masons. This was done as a favour to the masons since they did not have their own bookkeeping system to handle disbursement of money if only one cheque was issued. The company did not make any deductions from the cheques issued except a small fee for rental of a cement mixer.

The question of whether a person is an employee or an independent contractor has been canvassed by Labour Boards in a number of Canadian jurisdictions.

The Canada Labour Relations Board did an extensive analysis of the question in Societe Radio - Canada/Canadian Broadcasting Corp. and Union des Artiste et al 1 CLRBR(NS)

In this case the Board quoted from Professor H. W. Arthur's article entitled "The Dependent Contractor: A study of the Legal Problems of Countervailing Power" (1965-66), 16 U of Toronto, L.J. 89. In this paper Professor Arthur dealt with the common law test in determining whether a person is an employee of an independent contractor. He dealt with two of the tests applied in the Montreal V. Montreal

Locomotive Works Ltd. (1947) 1 D.L.R. 16/(P.C.) the "chance of profit" and "risk of loss". He comments:

> "where his (employee's) economic fate is controlled by his employer, experience has shown that the employee can improve his lot only through collective bargaining. Where, on the other hand, there are gains to be made by the investment of capital and the assertion of independent business judgement and initiative, collective bargaining recedes in importance."

In the case before the Board the masons are obviously in a situation where their economic fate is controlled by the company. The bottom line seemed to be that the company had blocks to be laid at one dollar a block and it made little difference to the company how many masons did the work as long as it was done to the company's requirements and within a certain time frame. There appears to be little chance of any one of the masons being able to significantly change his working conditions on his own. As suggested by Professor Arthur, the only practical way for the masons, in this case, to improve their lot was through collective bargaining.

It was suggested by the company witness that the masons were not dependent on the company. They were free to work with any other employer and in one case one of the masons did so. The evidence, however, also shows that the employees worked whenever they could on the company's job site. It was also indicated that there was little other work available in construction at that time.

The Canada Board also dealt extensively with the economic dependence concept in Societe Radio-Canada case Supra. In that case the Board comments:

> "The fact that a person works for an employer

suggests that, whatever his reason for doing so, he sees some interest, and hence advantage, in continuing to work for this employer. Economic subordination cannot be based on the employee's personal wealth or on the proportion of his total earnings which he derives from his work for this employer. If the employee has an interest in working for an employer, he has an interest in attempting to establish the terms and conditions of employment which are to prevail between himself and this employer. Is there a sufficient balance of power between himself and this employer to enable him to wring concessions from this employer? The fact that he is financially independent does not mean that he can negotiate on an equal basis with his employer. Obviously, if this is the case, he will be more independent in the sense that he can say to his employer, "Give me this benefit or I'm quitting". But, with the exception of this argument, which can be used by any employee to a greater or lesser degree, it does not mean that he, acting individually, can force the employer concerned to negotiate with him as an equal. In the same connection, we might say that the more capable an employee is, the greater his independence. Ability is not a criterion for exclusion. The terms and conditions of employment which concern collective bargaining are not limited solely to wages, but cover a whole range of provisions, including job security, grievance and arbitration procedures, statutory holidays, technological change, transfers, promotions, vacations, pension plans, health, life and accident insurance, occupational health and safety, fringe benefits, etc. Taken within the context of access to

> collective bargaining, economic dependence affects anyone who has an interest in grouping together with other individuals working for the same employer in order to establish terms and conditions of employment with this employer, something which cannot be done to the same extent on an individual basis. The individual becomes a link in the collective chain, to the extent that he can be attached in some coherent fashion to the group as a whole. Even more important, not only is it in his interest to be part of the group, but it is also in the actual interest of the group to which he belongs. The strength of the group lies in the association or grouping of the various elements which give it its homogeneity.

If we are to ensure social peace and the continued existence of collective bargaining, the application of the law must extend to individuals performing similar functions under similar conditions of subordination to the same employer. Excluding these individuals would create tensions and unrest in labour relations, tensions which frequently boil over into open conflict. Experience has shown, too, that employers, to avoid having to deal on a collective basis with their employees, will, if the opportunity presents itself, attempt to transform them into "contractors" and thus escape the application of the Code (in this connection, see Arthurs, supra, pp. 96-101, "Denial or Rejection of Employee Status as a Source of Labour Relations Unrest"). We must also ask, then, whether denial of "employee" status runs counter to the objectives of the Code.

The Board stated further:

> "Hence, if the work performed by a person is integrated into the employer's organization, if he has no other outlet except this employer, if he has not invested capital to produce the work, if he is under the employer's administrative or other control, if he has no chance of profit or risk of loss, if his risks are limited to the time he has invested, if his income is guaranteed, if he performs work similar to that performed by other employees of the same employer under similar conditions, if the concerted refusal to work by persons in a state of economic dependence performing the same job is capable of seriously disrupting the employer's operations and if the exclusion of this person is a factor of dissension in the employer's labour relations, it is unlikely that a person, under these conditions, will be deprived of his employee status. In some cases, certain indicators will be determinative, in others not.
> Obviously, for example, we cannot assign the same weight to the supervision-of-work aspect in the case of a manual labourer as in the case of a professional or highly skilled worker whose employer is totally incapable of controlling, in the traditional sense of the term, and directing the way in which the work is performed. This approach is consistent with the objectives set forth in the preamble of Part V:

The Ontario Labour Relations Board in United Steelworkers of America and Gulf Oil Canada Limited 1974

ICLRBR also dealt with the question and analyzed the Montreal Locomotive Case, supra. In the Gulf Oil case the persons were oil burner mechanics who worked with Gulf servicing their customers. There was a formal contract in place but it appears that the service men provided his own service vehicle and tools. In dealing with the "chance of profit" and risk of loss" the Board stated:

> "with respect to Chance of Profit and Risk of Loss, the two tests must be considered together. The contract provides for payment for service in accordance with a schedule of rates attached to the contract. The rates have reference to particular jobs and services. It also sets out an hourly rate for installation work not covered under the contract at $5.00 per hour. The contractor is not paid for what is referred to as a "repeat calls". Repeat calls are calls made necessary by reason of defective service or work occurring within a twenty-day period of completion. It is quite clear from the foregoing that what is involved here is simply a piecework arrangement and which leaves no room for chance of profit or risk of loss and renders the contractor simply a piecework wage earner. The element of profit and loss is therefore absent in the contractual arrangement under review".

It appears that in the case before the Board the masons are involved in a piecework arrangement that leaves little room for profit or loss.

From the evidence, it appears that the masons are employees within the meaning of the Labour Relations Act.

ISSUED at St. John's this 11th day of September, 1984.

For the Board,

GORDON G. EASTON, Q.C.
Chairman

Appendix 2, Schedule B

IN THE MATTER OF

The Labour Relations Act, 1977

- and -

Consolidated Rambler Mines
Limited, Baie Verte ("the Company"),
Applicant,

- and -

United Steelworkers of America,
Local 7190 ("the Union"),

- and -

United Steelworkers of America,
Local 8484 ("the Union")
Respondents

BEFORE: Gordon G. Easton, Q.C., Chairman
F.W. Russell and G. Gillingham, Members.

REASONS FOR DECISION:

This is an application received from Consolidated Rambler Mines Limited, Baie Verte, ("the Company") for an order to revoke the certification order issued to United Steelworkers of America, Local 7190, ("the Union") on the 17th day of May, 1967.

The Board by order dated 30 May, 1984, rejected the application.

The Applicant requests reasons for that decision.

The Board also received a similar application from the Company for another unit of employees which was also rejected. The reasons for decision will apply to both applications.

Information before the Board reveals that the Company was party to a collective agreement that expired on 30 September, 1982. Prior to the expiry, and in accordance with agreement the Company served notice that it intended to terminate the collective agreement as of 30 September, 1982. This notice was dated 19 August, 1982. The Union, by letter dated 27 August, 1982, informed the Company that it wished to amend the collective agreement and suggested dates for a meeting.

The Company responded on 6 September, 1982, indicating that it had shut down the mine; did not employ any employees who were covered by the agreement and saw no purpose in renegotiating the collective agreement.

The Union then requested the Minister of Labour and Manpower to appoint a conciliation officer to deal with the dispute between the Company and the Union. A conciliation officer was appointed but the Company maintained its original position and refused to negotiate.

The Company argues that the last collective agreement expired on September 30, 1982, and there have not been any employees in the bargaining unit since that time. It follows that there is no Union that can carry out negotiations with the Company.

The Union argues that there is no reason to have the certification order revoked. Should the mine re-open, the Union expects that the Company would negotiate with the Union toward a new collective agreement.

The application is made pursuant to Section 51(1)(a) of The Labour Relations Act and states:

> "where, following investigation, and after a hearing if requested by the party concerned, it is determined by the Board that a bargaining agent no longer represents a majority of employees in the unit for which it was certified or for which it acts as bargaining agent, the Board of its own motion or on application may
>
> (a) revoke the certification of the bargaining agent, if it was certified, or ....

Pursuant to this section, the Board has a discretionary power to revoke a certification order. In this case the employer's only reason in requesting the Board to revoke the certification is the fact that there are no employees in the bargaining unit.

Section 51 of the Act refers to the Board making a determination that a bargaining agent no longer represents a mamority of the employees in the unit for which it is certified. It is obvious that it is impossible for the Board to determine that a bargaining agent no longer represents a majority of employees if there are no employees and this may be a strong argument for the position of the Company. The Board, however, holds the position that the employees of an employer should determine whether or not they wish to be represented by a trade union. If the Company operations remain closed and no employees are hired then obviously there will be no reason to meet and negotiate a collective agreement. If employees are hired and the employees decide that they no longer wish to be represented by the Union, an application may be made to the Board at that time. The Board cannot see, in this case, where the Company is prejudiced if there is a dormant certification order.

For the above reasons the Board issued its orders of 30 May, 1984.

ISSUED at St. John's this 16th day of August, 1984.

For the Board,

GORDON G. EASTON, Q.C.
Chairman

Appendix 3, Schedule B

IN THE MATTER OF

The Labour Relations Act, 1977

- and -

Newfoundland Association of
Public Employees ("the Union") Applicant

- and -

Canadian Red Cross Blood
Transfusion Services,
St. John's ("the Employer"). Respondent

BEFORE: Charles White, Vice-Chairman
R. Gosse and J. Walsh, Members.

R. Earle for the Applicant
A. Lilly for the Respondent

REASONS FOR DECISION:

The hearing arose from an application made by the Newfoundland Association of Public Employees to amend a certification order issued by the Board on 12 October, 1976, to include the classification of Lab Helper/Clinic Assistant employed by the Employer at Corner Brook ("the application").

The Board, by a decision dated 29 June, 1983, decided that it was appropriate to include the classification of Lab Helper/Clinic Assistant in the bargaining unit and further indicated that it would only be done on receipt of an application.

The Union filed the application and the Employer, in its reply to it, stated that the Board in its decision of 29 June, 1983, had pre-determined the application presently before the Board and further requested that a different panel of the Board hear the application. The Board acceded to the request of the Employer and the application was heard by a new panel on November 24th, 1983.

The Employer argued that this panel of the Board is dealing with a different situation since there is now the possibility of a separate bargaining unit at Corner Brook because there are presently two employees working there as Lab Helpers/Clinic Assistants. The Employer further argued that the Board will be making a fundamental change in the original bargaining unit if it amends the unit to include the Corner Brook employees and should, therefore, canvass the employees before issuing an order. The Employer further argued that there should be compelling reasons to set up a multi-location bargaining unit. Such compelling reasons would involve a "community of interest" between the St. John's and Corner Brook employees; interchange of employees between locations; centralization of management authority; and functional interdependence of the two locations.

The Union argued that the Corner Brook operation is basically integrated with the St. John's operation. Significant management control is centered in St. John's, and all testing of blood is completed in St. John's. The Union further argued that this panel of the Board should be satisfied that there has been a significant change in the circumstances before the Board for this panel to decide the matter differently than did the previous panel.

The factual situation since the previous hearing before the Board has not changed significantly. The Employer operates a clinic out of the Western Memorial Hospital and the employees at this location perform basically the same work as they did at the time of the previous hearing. The Employer, however, has hired one additional employee in the Lab Helper/Clinic Assistant classification and has placed an additional piece of equipment in the clinic which eliminates the need to have further processing done at the St. John's headquarters. The employee who intervened in the previous application did not file a formal intervention to the application.

This panel recognizes that the Employer had only one employee in that classification when the previous decision was made; that since that time the Employer has hired a second person and further anticipates that it will likely hire a third person (and possibly others) subject to obtaining budget approval.

The Board recognizes that there is strong argument for separate bargaining units at each work place, and the Board has generally followed such a practice with few exceptions. In the present situation, however, the employees in the Corner Brook operation are performing basically the same work as the St. John's employees; employees are paid on the same salary scale and have similar benefits; and, effective control over the operation is exercised by the St. John's office. In these circumstances, the Board is unable to find that the Corner Brook operation is an appropriate separate unit for collective bargaining.

For the above reasons the Board will issue an order amending its order of October 12th, 1976, to include the employees at Corner Brook who are classified Lab Helper/ Clinic Assistant.

ISSUED at St. John's this 11th day of January, 1984.

FOR THE BOARD,

CHARLES W. WHITE
Vice-Chairman

Appendix 4, Schedule B

IN THE MATTER OF
The Labour Relations Act, 1977

- and -

Office and Professional Employees
International Union, Local 255
("the Union") Applicant

- and -

Abitibi-Price Inc., Grand Falls,
("the Company") Respondent

BEFORE: Charles W. White, Vice-Chairman
W. Alcock and J. Walsh, Members

M. Harrington for the Respondent,
A. Tremblay for the Applicant

DECISION:

This is an application pursuant to Section 18(2) of The Labour Relations Act, 1977, requesting the Labour Relations Board to amend the certification order issued to the applicant to include the classification of Operations Planner.

Evidence before the Board indicates that the designation of Operations Planner was established by the Company in order to moniter more closely its forest management plan so as to avoid penalties imposed by Government legislation.

In February, 1981, the Union received a copy of the job description for the position of Operations Planner. In December, 1981, the Union filed a grievance alleging that one of the Operations Planners was doing Union work. This grievance was subsequently dropped and the Union decided to bring the matter before the Board.

The Union argues that the Operations Planners are an extension of the Forestry Technician position and are involved in the technical aspects of forest management, and further that they are not involved in the implementation of the forest management plan. Implementation, the Union contends is left to the production section which includes a number of supervisors and foremen. As well, in the Union view, the planners have no budget to administer; don't supervise other employees; and do not have authority to commit the Company financially.

The Company argues that the Operations Planner is an integral part of the forest management plan of the Company; that the Operations PLanner, in conjunction with the Supervisor of Forest Investory and Surveying, prepares the one year, two year, and five year forest management plans of the Company; that the Operations Planner is also involved in deciding which areas of the Company's forest lands will be harvested, and when such harvest will occur; and that the Operations Planner is employed in a confidential capacity since he has access to production costs.

From the evidence, it appears that the position of Operations Planner was established principally because of a Government decision to have the paper companies better manage forest resources. In order to more fully comply with Government legislation and to avoid penalties the Company established specific management plans. Evidence before the Board revealed that the Operations Planner is involved in the formulation of these plans and in their implementation.

The Board heard evidence from a forestry technician which indicated that the technicians are not involved in the discussions of the management plan except to provide raw field data that may or may not be accepted. The technician has no knowledge of the details of the five year management plan which the Company has instituted.

The Board does not accept the principal Union argument that the Operations Planner is an extension of the forestry technician position. It is clear from the evidence that the Operations Planner is involved with senior management in developing the Company's forest management plan; monitoring the implementation; and subsequent adjustments to the plan if such are required. As such there is a management element to the Operations Planner position.

Further, in carrying out the plan, the Operations Planner may be involved in direct supervision of employees, albeit on a limited basis.

The Labour Relations Act, 1973 defines an" employee" as:

> "... a person employed to do skilled or unskilled, manual, clerical or technical work.... but does not include a manager or superintendent or any other person who, exercises management functions....."

Based on the evidence before it, the Board finds that the Operations Planner falls within the category of a person exercising management functions and, as such, should be excluded from the bargaining unit.

In so finding, the Board has not accepted the Company's argument that the Operations Planner is employed in a confidential capacity in matters relating to labour relations simply because of access to certain production costs. It appears that these costs relate to the logging section where the employees are represented by another bargaining agent.

The appropriate order will be issued by the Board.

DATED at St. John's this 4th day of May,A.D., 1984.

For the Board,

Charles W. White,
Vice-Chairman

Appendix 5, Schedule B

IN THE MATTER OF

The Labour Relations Act, 1977

- and -

Frederick R. Woolridge, Q.C.;
William R. Purdy; and Fred
Bowdring, Members of a
Board of Arbitration
(collectively referred to as "the
Arbitrator")

- and -

International Brotherhood of
Electrical Workers, Local
2330
("the Construction Local")

- and -

Dominion Engineering Company
Limited ("the Employer")

BEFORE: Charles White, Vice-Chairman, F. Russell and G. Gillingham, Members

APPEARANCES:
R. Earle, for the Construction Local;
H. Smith, for the Employer;
H.J. Puddester for Newfoundland and Labrador Hydro and Churchill Falls (Labrador) Corporation Limited

DECISION OF THE BOARD:-

This is a reference referred to the Labour Relations Board by the Arbitrator pursuant to Section 85 of The Labour Relations Act, 1977 ("the Act"), requesting the Board to determine if there is a collective agreement in effect between the Construction Local and the Employer. The exact form of the reference as submitted to the Board by the Arbitrator is as follows:

> "The Newfoundland Labour Relations Board is requested to identify whether there existed a Collective Agreement between the International Brotherhood of Electrical Workers, Local 2330 and Dominion Engineering Company Limited of Peterborough, Ontario, with respect to work done by Dominion Engineering Company Limited on a generator at the Churchill Falls, Labrador generating station, August to December 1982?"

The Construction Local and the Employer requested a hearing before the Board in order to present evidence.

The Board heard the matter on September 7th, 1983 and November 15th, 1983, at which times each party presented witnesses and entered exhibits.

Mr. Earle, solicitor for the Construction Local, raised a preliminary objection with respect to an Intervention which had been lodged with the Board by Newfoundland and Labrador Hydro, and a further Intervention which had been lodged by Churchill Falls (Labrador) Corporation Limited.

Argument on the preliminary objection was heard from Mr. Puddester, solicitor for the Intervenors; from Mr. Earle, solicitor for the Construction Local; and from Mr. Smith, solicitor for the Employer.

The Board ruled that since there was an objection to the granting of status to the Intervenors, and that in the opinion of the Board hearing the Intervenors was not necessary to a determination by the Board; the Intervenors were not interested parties, and not entitled to be heard in the matter.

The only question for determination by the Board is the question submitted by the Arbitrator and it is for the Board to conclude whether a collective agreement existed between the Construction Local and the Employer during the period August to December 1982 ("the relative time").

From the evidence it appears that during mid-August, 1982 the Employer commenced work under contract to the owners on a generator at the Churchill Falls power facility. The generator had been damaged in the course of operation and it further appears that replacement of certain major parts of the generator were necessary and that the replacement would necessarily take place on site ("the Work").

The Employer employed mem[illegible] of the Maintenance Local to do the Work.

It appears from the evidence that the Work related specifically to one of ten generating units forming part of the facility. Further evidence indicated that the facility was designed so that at least one unit could be out of service at any given time for whatever reason or purpose.

The Work was a fairly substantial undertaking, but did not involve the shutdown of the facility.

As to the possible relationship between the Employer and the Construction Local and the Employer and the Maintenance Local there are three possibilities:

1. there was in existance a collective agreement between the Construction Local and the Employer. If so, this agreement would arise from voluntary recognition granted by the Employer to the Construction Local on May 3rd, 1982 whereby the Employer recognized the Construction Local as "the sole and exclusive bargaining agent in respect of rates of pay, hours of work and working conditions for all employees throughout the Province of Newfoundland and Labrador and classifications

coming within the scope of the Provincial Collective Agreement now in full force and effect between the Newfoundland Construction Labour Relations Association, individual electrical contractors and Local Union 2330 of the International Brotherhood of Electrical Workers" ("the NCLRA Agreement")'

2. there was in existance a collective agreement between the Employer and IBEW Local 2351 ("the Maintenance Local") which was first entered into during 1976 and renewed at various times thereafter, with a renegotiation in 1982 for the term August 1st, 1982 to July 31st, 1983;

3. there was no collective agreemnt in force between the Employer and the Construction Local, or between the Employer and the Maintenance Local.

The Construction Local argued that an agreement with the Maintenance Local did not in fact exist in that the requirements as to composition of collective bargaining teams as required under the Act were not followed. The Board rejects this contention.

The evidence has indicated that a collective agreement existed since 1976 and that in 1982 an agreement was renegotiated. In fact, the 1976 agreement had continued to exist from year to year, despite the expiry of its original term, and in the event the 1982 collective agreement was for any reason, illegal, the agreement of 1976 between the Employer and the Construction Local would continue in effect. In any event, both the Employer and the Construction Local lived under the terms of the 1982 agreement and it was recognized by both of these parties at the relative time.

The Board finds that there is in existance a Collective Agreement between the Employer and the Maintenance Local.

There is, as well, by virtue of the voluntary recognition, a collective agreement between the Employer and the Construction Local.

The question to be resolved now becomes which of these two collective agreements applies to the Work.

The Employer argued that the recognition by it of the Construction Local is for the new construction of hydro generation at the Upper Salmon project and that this voluntary recognition through the NCLRA Agreement cannot be applied to what it argues is maintenance at the Churchill Falls facility.

By Order of the Board dated October 12th, 1976 the Board accredited the Newfoundland Construction Labour Relations Association to be the sole collective bargaining agent for all unionized employees in the industrial and commercial sector of the construction industry ("the Accreditation Order") subject to certain exceptions including inter alia: "the Board decides that industrial plant maintenance and maintenance performed on completed installations and specifically, but without limiting the generality of the foregoing, maintenance service of elevating devices, does not fall within the industrial and commercial sector of the construction industry and should be excluded from the Order of Accreditation".

There is specifically excluded "maintenance and maintenance performed on completed installations".

In order for the Board to conclude that the NCLRA Agreement is applicable it must find that the Employer is not only a unionized employer (which is clear) but also that the Employer is working in the commercial and industrial sector of the construction industry for the purpose of the Work and if this is so, that the exceptions listed in the Accreditation Order are not applicable.

On the facts, as presented to the Board, a portion of the facility or system broke down. The Board must determine whether a rather major application of labour and materials in respect of that part of the system amounts to maintenance, or if it is undertaking which is properly within the industrial and commercial sector.

Clearly if the Work is "maintenance" in the usual sense, the conclusion must be that it is not covered by the collective agreement with the Construction Local.

The definition of "construction industry" is set forth in Section 54(1)(b) of the Act: "construction industry 'means the on site constructing, erecting, altering, decorating, repairing, or demolishing of buildings, structures, roads, sewers, water mains, pipe lines, tunnels, shafts, bridges, wharves, piers, canals or other works;"

Initially, it might be concluded that the Work was "on-site", "repairing", of a "structure"; if not a structure, then, an "other work".

The usual method of legislative interpretation which would be applied to Section 54(1)(b) would involve application of the "ejusden generis" rule which means literally "of the same kind or nature" and is defined in Osborne, Concise Law Dictionary 5th Edition, as "a rule where particular words are followed by general words, the general words are limited to the same kind as the particular words".

In reference to Section 54(1)(b) the juxtaposition of the word "structures" between "buildings", and "roads" could lead to the conclusion that "structures" is of the same nature as buildings and roads, being of an overall nature as opposed to part of a facility. The use of "other works" would, under application of the rule, mean works of the same kind and nature, and could well be interpreted to exclude efforts in relation to one unit of a ten unit generating facility. This could mean that the unit would not fall within the definition of "structure", or of "other works", but is merely an aspect of the entire power generation facility.

On this analysis of the evidence, it is clear that the Work, while it was considerable in scope, was, in fact, maintenance of a part of a completed installation, and accordingly was excluded from the Accreditation Order. Further, while the Board is not making a finding in this regard, it may well be that the Work does not fall within the definition of "construction industry".

In coming to its finding the Board is relying on its analysis that the Work, in these circumstances, is maintenance. This interpretation, does not in any way amend the Accreditation Order. The question as to whether a particular undertaking is construction, and falling under the Accreditation Order, or maintenance and not included in the Accreditation Order, is in the absence of any future general ruling of the Board, to be determined in each particular set of circumstances

It is the finding of the Board that there was not in existence a collective agreement between the International Brotherhood of Electrical Workers, Local 2330, and Dominion Engineering Company Limited of Peterborough, Ontario with respect to work done by Dominion Engineering Company Limited on a generator at the Churchill Falls, Labrador generating station, August to December, 1982.

Accordingly, for the above reasons, the Board finds that the answer to the question submitted by the Arbitrator is "No".

The appropriate Order will be issued by the Board.

ISSUED at St. John's this 26th day of April, A.D., 1984.

FOR THE BOARD,

CHARLES WHITE,
Vice-Chairman

IN THE MATTER OF

The Labour Relations Act, 1977

- and -

Frederick R. Woolridge, Q.C.,;
William R. Purdy, and Fred Bowdring,
Members of a Board of Arbitration
(collectively referred to as "the
Arbitrator")

- and -

International Brotherhood of
Electrical Workers, Local 2330
("the Construction Local")

- and -

Dominion Engineering Company
Limited ("the Employer")

BEFORE: Charles White, Vice-Chairman;
F. Russell and G. Gillingham,
Members.

APPEARANCES: R. Earle for the Construction Local;
H. Smith for the Employer;
H. J. Puddester for Newfoundland and
Labrador Hydro and Churchill Falls
(Labrador) Corporation Limited

MINORITY DECISION BY GONZO GILLINGHAM:

I disagree with my colleagues on this matter. There is, however, no disagreement on the fact. There was a major breakdown, in fact, one of the units was completely out of commission. My disagreement primarily arises out of the position as to whether the work in question was "repairing" as envisaged by the Legislature.

It is my opinion that there is a significant difference between maintenance and repairs.

REPAIR: "to get ready, to put back in good condition after damage".

MAINTENANCE: "maintaining or being maintained, up keep".

If one is to conclude that the work carried out in this case was maintenance then the ultimate conclusion would be that if for some strange reason the total plant was destroyed then under the definition of maintenance it could be completely reconstructed.

In the case of maintenance at Churchill Falls, as with all maintenance, there is, in general, a routine to follow. There is a crew of some sixty-five (65) operating personnel for this purpose and such maintenance is carried on around the clock.

The work in question here is that of repair after a major breakdown. The cost was in excess of one million dollars. The maintenance crew did not do the work in question. There was a construction contractor called in to do the repair. Again, I reiterate if this type of repair can be done in the name of maintenance as envisaged by my colleagues then the whole system could be reconstructed in the name of maintenance. In my opinion, it was not the intention of the Board or the Legislature to exclude such work from the Construction Industry.

It is my position that the Legislature made it clear that in defining the "Construction Industry" it intended that "Repairing" be included. If one looks at the Act, Section 54(1) (b), it will be noted that the "Construction Industry" is defined as being, among other things, "Demolishing". It is, therefore in my opinion, inconsistent in the extreme to find that the Legislature would make a point of including "Demolishing" as being Construction while on the other hand intending that "Repairing" especially of the magnitude we have here be excluded.

If one accepts the position put forward by my colleagues, it in effect excludes maintenance and repairing from the industry.

The Board by its Order of 12th of October, 1976 did exclude "maintenance"; however, it made no mention of "repairing". It is my position that one must conclude that the Board did not intend to exclude "repairing". If it did, then why did it not say so. It could hardly be considered an oversight. After all, it was at the time considering an application for accreditation of the industry and a piece of legislation which made specific references to "repairing" as being a part of that industry.

To suggest that when the Board excluded "maintenance", it automatically excluded "repairing" is, in my opinion, an erroneous interpretation of the Board Order.

It is my position that the work in question could fit within either of the definition of "Structure" or "Building". To decide that question, one must ask what was it when it was put in place? How did it originate? The answer is obvious. It was constructed. If it was constructed, then it must have been construction.

The total project therefore, would consist of a number of structures and buildings, one of which would be the power house which includes the generators.

I find that the work in question was carried on within the construction industry and that the Agreement between Local 2330 of International Brotherhood of Electrical Workers and Dominion Engineering Company Limited applied to this work.

Another important consideration is what has happened in the industry with respect to this type of work. The latest and probably a case on point would be what happened at the Abitibi Price Power Station at Bishops Falls in 1983. As a result of a flood, a portion of the dam was destroyed and the power house was flooded causing damage to the generators.

The repair work was done by contract - the same as we have here. It was carried on under the various construction union agreements. To accept the interpretation put forward by my colleagues would mean that this work also would have been maintenance and not a part of the Construction Industry. While not necessarily a consideration with respect to arriving at my decision, a finding that this work does not fall within the Construction Industry could have a very negative effect on Labour Relations in the Construction Industry.

ISSUED at St. John's this 26th day of April, 1984.

GONZO GILLINGHAM
BOARD MEMBER

Appendix 6, Schedule B

IN THE MATTER OF

The Labour Relations Act, 1977

- and -

Jerome W. Dinn, Applicant,

- and -

Sheet Metal Workers International Association, Local 512 ("the Union")

- and -

Beck Construction Limited, St. John's, ("the Company"), Respondents,

- and -

Newfoundland Construction Labour Relations Association ("the Association"), Intervenor.

H. Smith for the Company and the Association
D. Lenahan for the Union

BEFORE: Gordon G. Easton, Q.C., Chairman
F. W. Russell and J. Walsh, Members.

REASONS FOR DECISION:

This is an application referred to the Labour Relations Board pursuant to Section 17 of The Labour Relations Act, 1977, requesting the Board to determine if there is a collective agreement in effect between Sheet Metal Workers International Association, Local 512, ("the Union") and Beck Construction Limited, St. John's ("the Company").

The Board heard the application and by order dated 20 June, 1984, decided that there was no agreement in effect between Sheet Metal Workers International Association, Local 512, ("the Union") and Beck Construction Limited, St. John's ("the Company").

The Board's reasons for decision follows:

This application arises out of a grievance filed by the union against the company alleging a violation of the collective agreement in effect between the union and the Association. The company refused to agree to the appointment of an arbitrator and consequently, the union requested the Minister of Labour and Manpower to make the appointment. Since there appeared to be a question as to whether the company was bound by the collective agreement, the Minister referred the matter to the Board.

The Board by order dated October 12, 1976, and pursuant to Section 61 of the Act accredited the Association as the bargaining agent for all unionized employers in the Industrial and Commercial Division of the Construction Industry.

Section 62(1) of The Labour Relations Act, 1977, states that upon accreditation, all rights, duties, and obligations under the Act of employers for whom the Association becomes the bargaining agent apply to the Association.

The union contends that the company is bound by the collective agreement in effect between the union and the Association by virtue of the wording in the collective agreement and the provisions of The Labour Relations Act as it relates to the construction industry. Information before the Board reveals that the Union signed an agreement with the Association effective May 31, 1982 to April 30, 1984. The agreement was signed by B. Titmus and W. A. Alcock of the Association on behalf of all unionized employers covered by the accreditation order dated October 12, 1976. This agreement was signed on the 15th day of June, 1982.

Subsequent to the signing of this agreement, the union, at the request of W. A. Alcock, Director of Labour Relations for the Association, returned to the bargaining table. At that time, all of the construction trade unions were present and the negotiations resulted in a new agreement being signed by the union and the Association effective May 31, 1982, to April 30, 1985. This agreement was signed on February 8, 1983, in the same names as was the previous agreement.

The union contends that both these agreements made it clear that the parties intended to cover all unionized employers who were covered by the accreditation order. The title page of the agreement as well as the signature page clearly states the agreement covers all unionized employers. The agreement is not limited to all sheet metal employers. The union further argues that the Association was aware of the union's concerns that general contractors were subcontracting work to non-union contractors. This was an issue in negotiations and several clauses were added to the collective agreements to cover the problems. The union feels that Article 3:04

> "No employer shall subcontract or assign any of the work described herein which is to be performed in the shop or on the job site to any contractor or subcontractor who is not signatory to this Agreement or who is not a member of NCLRA. Any employer found to be in violation of this clause by Arbitration shall reimburse Local 512 for lost man hours on fabrication and installation."

together with Article 3:06

> "The Union hereby agrees not to supply journeymen or apprentices to any contractor who is not signatory to this Agreement (or a member of NCLRA) subject to 3:04."

and Article 3:07

> "The employer shall not employ members of Local 512 who have worked with non-union contractors after December 31, 1982."

are intended to restrict general contractors from subcontracting to non-union employers. The union feels that at the joint bargaining meetings, which resulted in the second collective agreement being signed, the Association acted on behalf of the company for all of its operations including Sheet Metal work.

The union also points to the fact that there is no individual listing of employers in the agreement. It is inferred that all employers who are members of the Association are bound by the agreement.

The company contends that it is a general contractor and as such only employs carpenters and labourers. The company admits that the Association has its bargaining rights as it relates to these trades. The company has on occasion employed cement finishers and rodmen. The company, however, is adamant in its view that it never has employed sheet metal workers. Negotiations through the Association have always been carried out in trade divisions and the company has never been represented in the sheet metal division. Trade divisions were maintained when joint negotiations were carried out. Sheet metal work has always been contracted out. The company also contends that Articles 3:04, 3:06 and 3:07 were negotiated before the joint sessions were held and was obviously designed to cover sheet metal contractors.

The company also argues that it could not assign bargaining rights to the Association for sheet metal workers since it has not and does not now employ persons in that trade. Since it does not employ sheet metal workers, there could not be a certification order nor did the company grant voluntary recognition.

The Association derives its bargaining authority on behalf of unionized employers in the Industrial and Commercial Division of the Construction Industry from the accreditation order issued by the Board on 12 October, 1976. Section 62(1) of the Act states:

> "Upon accreditation, all rights, duties and obligations under this Act of employers for whom the accredited employers' organization is or becomes the bargaining agent apply to the accredited employers' organization, and a collective agreement between an employer and a trade union or council of trade unions that is in force at the date of accreditation of an employer's organization does not bar a trade union or council of trade unions from giving notice to such accredited employers' organization to commence collective bargaining nor does it bar such accredited employers' organization from giving notice to a trade union or council of trade unions to commence collective bargaining."

This section gave the Association bargaining rights for all employers for whom the Association is or becomes the bargaining agent.

In order to determine the employers for whom the Association may obtain bargaining rights, it is necessary to look at other Sections of the Act. Section 58 provides that:

> "Subject to the rules of the Board, an employers' organization that claims to represent the unionized employers in a geographic area engaged in a particular sector of the construction industry may make

> application in a form approved by the Board to be accredited as the sole collective agent for all unionized employers in the sector of the construction industry in that geographic area."

This section limits an employers' organization to apply for unionized employers. A unionized employer is defined in Section 54(e) as an employer of unionized employees in the geographic area or areas and sector concerned. Subsection (d) of Section 54 defines a unionized employee as:

> "unionized employee" means an employee on behalf of whom a trade union or council of trade unions has been certified as bargaining agent under the Act or voluntarily recognized by an employer, where the certification has not been revoked or the bargaining rights have not been terminated; and....."

In this Section there has to be a certification or a voluntary recognition for an employee to be considered a unionized employee.

Section 64(1) provides:

> "Subject to subsection (2) of Section 62 a collective agreement entered into between an employers' organization and a trade union or council of trade unions, is binding upon the employers' organization, employers whose bargaining rights have been acquired by the employers' organization engaged in the construction industry in the sector and area

> covered by the accreditation order, the
> trade union, council of trade unions and
> every employee within the scope of the
> collective agreement."

This section applies where the Association has acquired the bargaining rights of unionized employers in the area and sector covered by the accreditation order.

The Association can only represent unionized employers and employers can become unionized through a certification order or voluntary recognition.

The union has taken the position that the company through its actions has granted voluntary recognition to the union. Joint negotiations were carried on and agreement signed with the company taking an active part in the negotiations.

The Board is unable to accept the argument that the joint bargaining sessions resulted in a voluntary recognition being granted by the Association on behalf of the company. The Act contemplates that the employer has to grant the recognition. There is no evidence before the Board that the company granted such recognition.

The Board is unable to see how the company could grant recognition or be certified for sheet metal workers if it has never employed persons in the trade.

There is evidence before the Board that the company is a unionized employer as it relates to labourers and carpenters. As a unionized employer, the company participated in the Construction Industry negotiatio[illegible] If one were to extend Section 54(d), the company may be a unionized employer for all trades once one union has become certified or is voluntarily recognized. However, if this is carried to its ultimate conclusion an employer who employs two electrical employees could become certified and then considered to be a unionized employer for all of his employees which could include five hundred carpenters who may not want to be represented by a union. It appears to the Board that this section cannot be interpreted to achieve such a result. In order to become a unionized employer, an employer must have employees and a trade union has to obtain a certification order or the employer has to grant voluntary recognition to the union. In this case there is no evidence that the company meets any of these conditions. The company has not employed any sheet metal workers and there is no evidence of certification or voluntary recognition.

For the above-reasons the Board issued its order of 20 June, 1984.

ISSUED at St. John's this 26th day of October, 1984.

For the Board,

GORDON G. EASTON, Q.C.
Chairman

Appendix 7, Schedule B

IN THE MATTER OF

The Labour Relations Act, 1977

- and -

United Brotherhood of Carpenters
and Joiners of America, Local 579, Applicant

- and -

Tri-City Construction Limited,

- and -

Sherwood Construction Limited, Respondents.

BEFORE: Gordon G. Easton, Q.C., Chairman
F. W. Russell and J. Walsh, Members

M. Harrington for the Respondents
E. Shortall for the Applicant

REASONS FOR DECISION:

The United Brotherhood of Carpenters and Joiners of America, Local 579, made an application for certification for employees of Tri-City Construction Limited on the 7th of September, 1983. This application was received by the Board on the 9th of September, 1983. Tri-City Construction Limited received a copy of the application 23 September, 1983. The letter from the Board enclosing a copy of the application was dated 12 September, 1983.

Sherwood Construction Limited was incorporated on the 19th of September, 1983. It should be noted at this time that Tri-City Construction Limited, Sherwood Construction Limited, and Marco Limited have the following as shareholders:

Tri-City Construction Limited

Directors - Margaret E. Hickman, President;
Thomas J. Hickman, Vice-President; and

David Martin, Secretary.

Shareholders - Margaret E. Hickman, Thomas J. Hickman, and Christoper Hickman.

Sherwood Construction Limited

Directors - Margaret E. Hickman, President; David Martin, Vice-President; and Thomas J. Hickman, Secretary.

Shareholders - Michael Harrington, Ernest Reid, Augustus Lilly, Margaret Hickman, Thomas Hickman, and Christopher Hickman.

Marco Limited

Directors - Thomas J. Hickman, President; Margaret E. Hickman, Secretary; David Martin, Vice-President; and Frederick Pelley.

Shareholders - Thomas J. Hickman, Margaret E. Hickman, Christopher Hickman, and Thomas J. Hickman.

At the time that Local 579 applied for the employees of Tri-City Construction Limited that company had employees working at the Bonavista Hospital site; Memorial University, the Confederation Building; and the Bay Roberts Arena. The application pursuant to Section 89 of the Act concerned only the Bonavista Project. There was no discussion with respect to any other project.

The Board certified Local 579 for employees of Tri-City Construction Limited on 15 December, 1983. In the meantime on 7 October, 1983, the four employees of Tri-City Construction Limited who were working on the Bonavista project were called together by the superintendent and advised that they were to be laid off. At the same time they were advised by the company superintendent, Mr.Pinsent that they could go to work with Sherwood Construction Limited on Monday, 10 October, 1983, if they signed a declaration stating that they were not members of any union. The employees refused to do this and the declaration was subsequently shortly withdrawn.

On 10 October, 1983, all of the employees except one Junior Keel returned to work. They went to work on the same location, with the same supervisor doing essentially the same work. The employees at that time received a raise of $ 1.25 an hour since from the evidence which was adduced at the hearing it appears that other contractors in the area were paying their employees at the higher rate.

Section 89 applications are generally troublesome but no more so than in the construction industry. There are of course, situations where genuine contracting out or subcontracting can go on without their attracting the bargaining rights which may have been established in the main enterprise. On many occasions the term subcontracting and contracting out are used synonymously but they are not the same and the differences can be fundamental as to whether a sale has occurred under our Section 89. As is pointed out in the Reimer Express Lines Limited et al. 1984 CLLC, 14,308

> "for there to be a subcontract, there naturally has to be a primary contract. Where one party has contracted with another to produce a given result and it lets out part of its contract to others, the secondary contractors are commonly known as subcontractors. The classic example is found in the construction industry where general

> contractors, who have the overall control and responsibility for a project, subcontract some or all of its function to independent enterpreneurs specializing in the particular field ie. electrical, plumbing, millwright, etc.,etc. Such subcontracts are usually won through a tendering system and the transactions are not considered to be a sale of business. In contrast where work is performed by employees for the purposes of one's own business and a decision is taken to have the work done by others who are not employees, that is contracting out which, in some circumstances, can constitute a sale of business under the code".

In this case it was argued by the companies that Marco Limited was the general contractor and that it in fact had subcontracted out all of the various phases of the construction of the Bonavista project. There is no question but that on August 9, 1983, Marco Limited did award a contract to Tri-City Construction Limited to provide labour to construct the foundations at the Bonavista project. The evidence shows that on September 9, 1983, the Board had received the application for certification of employees of Tri-City Construction Limited. On September 19, 1983, Sherwood Construction Limited was incorporated. On October 7, 1983, as earlier indicated, four employees of the company were called together and were advised that they were to be laid off. They were advised at the same time by the company's supervisor, Mr. Arthur Pinsent that they could go to work with Sherwood Construction Limited on Monday, October 10, 1983, if they signed a declaration that they were not members of any unions. The employees as we know refused, and the request was withdrawn, but all employees except Junior Keel did go to work on Monday, the 10th. In the meantime on October 5, 1983, a letter had been sent by Marco Limited to Sherwood Construction Limited advising that company, that its price of $20,000.00 to provide labour to complete roof blocking and interior finishes had been accepted.

Our Act does not, of course, have a section equivalent to Section 1(4) of the Ontario Labour Relations Act. There that Section says

> "Where, in the opinion of the Board, associated or related activities or businesses are carried on, whether or not simultaneously, by or through more than one corporation, individual, firm, syndicate or association or any combination thereof, under common control or direction, the Board may, upon the application of any persons, trade union or council of trade unions concerned, treat the corporations, individuals, firms, syndicates or associations or any comination thereof as constituting one employer for the purposes of this Act and grant such relief, by way of declaration or otherwise, as it may deem appropriate.

However, even though we do not have the equivalent section, as a Board we cannot ignore that the three companies here all have common directors and shareholders. Thomas Hickman, Margaret Hickman, and David Martin are all directors and shareholders of all three companies. The appropriate share lists were placed in evidence. Consequently, while the Board cannot obviously by legislative authority regard all three companies as constituting one employer, the inference has to be clear and unmistakable that all three individuals control the same three companies. This is not the same element of contracting out as referred to in the Reimer Case to "independent enterpreneurs". If that same contract had gone to a completely separate corporate entity with absolutely no connection with Marco Limited the inference would not have been so overwhelming.

The fact that work previously done by Tri-City Construction Limited is now being done by Sherwood Construction Limited, although not conclusive, is significant. That this labour work originally being done by Tri-City Construction Limited, to complete the foundations is now on Monday, being done by Sherwood Construction Limited is worthy of note. Here Tri-City Construction Limited employees and foremen did exactly the same work on the same site with the same equipment with the same supervisor. It is difficult to resist the conclusion that there has been a transfer, or other disposition of a business or part thereof.

While this Board does not feel that on balance, the employer was guilty of any unfair labour practice, it is not in our opinion inappropriate to point out that the incorporation of Sherwood Construction Limited did occur after the application for certification was made. It may be of course, pure coincidence since the records show that the official notification was not received by the company until September 23, 1983. One of the principles of all three companies stated that he wished to operate non-union or that he could not compete with non-union companies. This rethinking of the economic realities of union vs. non-union is alluded to in Westinghouse Canada Limited (1980) 2 Canadian LRBR 469 application for judicial review dismissed 80 CLLC 14,062 where on p. 497 the Ontario Board mused:

> "Can an employer faced with economic difficulties caused by collective bargaining-related factors (wages, benefits, seniority, work practices, etc.) act to remove himself from his collective bargaining relationship? It may well be that it is more profitable to operate without a union than with one but if an employer can react to this reality simply by moving his business, the right of employees to engage in collective bargaining would be seriously undermined. What if the employer who is faced with an economic crisis caused by collective bargaining related factors, seeks relief from the union and is met with an unsympathetic or unsatisfactory response? Assuming that these factors could be established, the answer is by no means clear."

Here, of course, there was no "seeking of relief". The employer unequivocally stated his position that he wished to have a non-union company. To infer from that ascertion that a union company would have equal or less economic obligations would, of course, be naive. The obvious inference is that the employer wished to operate Sherwood Construction Limited without the restraints imposed by either a certification order or a collective agreement. As a matter of fact, it is not an inference. The evidence clearly shows this to be the position that the employer had adopted and it was defended at the hearing.

Having said this, however, we pointed out that "where the employer, without any opposition to the right of employees to engage in collective bargaining simply tries to cut cost, we do not think that it can fairly be said that the employer is motivated by antiunion animus. On that assumption, although contracting out does in a very real sense deprive employees of this right to be represented by a bargaining agent, it must be balanced against the legitimate economic interests of employers" see, Reimer Express Lines Limited (supra). Nevertheless, the employer while maintaining his right to protect his economic interest and although not motivated by anti-union animus may still find that its actions are caught in the legislative net of Section 89 as amended and that a certification order may extend to the new or recently incorporated economic entity.

The general language used in our Section 89 as amended to include " or otherwise dispose of" has been liberally interpreted by this board. Similar or identical language has attracted the same fairly broad interpretation. See Radio CJYQ Limited (1978) 26 di 576 and (1978) 1 Canadian LRBR 568 and Thorco Manufacturing Limited 65 CLLC 16,052. In Thorco (supra) the Board stated in part

> "having regard to the particular language used and the remedial object sought to be attained by and the wide meaning which must be attributed to the preceding word transfers, it is our opinion that the generality of the words any other manner of disposition is not intended to be in any way limited by or interpreted ejusdem generis with the words leases or transfers. In our opinion, it is more in harmony with the language of and the remedy envisaged by the enactment to interpret the words and any other manner of disposition as an omnibus or saving provision intended to include disposition of the business or part or parts thereof by any mode or means whatever which are not appropriately described by the preceding words which state that sells

include leases or transfers."

Labour Relations Boards in Canada have generally required that there be some "nexus" between the former employer or business enterprise and the new one. In the instant case from a review of the evidence it is clear that Tri-City Construction Limited was carrying on the business of carpentry on Friday afternoon and that work had not in fact been completed. Granted the evidence was not percise as to the amount of work remained to be done. It is, however, clear that during the following week the employees of Tri-City Construction Limited continued to do the same work as they had done before on the same project, under the same supervision with the only apparent change being that a new sign appeared on the site indicating that Sherwood Construction Limited was on site to do certain aspects of the job.

From the evidence it seems that the employees of Tri-City were never told that their employment was to extend to only a portion of the whole contract. Indeed, it was their evidence that they expected to be employed doing carpentry during the whole of the project. Indeed, Mr. Hickman himself could give no real explanation why the corporate entity of Tri-City Construction Limited could not have continued to do the labour for roof blocking and interior finishes. There was no evidence of any special expertise or knowledge peculiar to Sherwood Construction Limited which would require it to do the work. Also, in all of this, of course, one cannot ignore the climate in which all of this occurred. An application for certification had been made on September 7, 1984. On September 19, 1984, one of the principals of Marco and Tri-City Construction Limited incorporates Sherwood Construction Limited and then awards the labour contract for roofing and interior finishes to that company. Had there been no application for certification and had Marco Limited subcontracted out facets of the project, the necessary nexus or connection may of course, not be made. Here, however, in considering all of the evidence of the case, it is hard to escape the conclusion that the incorporation of Sherwood Construction Limited was an attempt to avoid the more onerous responsibilities of union contract. Indeed, Counsel for the employer said in argument "(he) was simply trying to protect himself and his company for contracts bid as a non-union contractor and did not want to be faced with a unionized situation when it had been on a non-union basis". It may all be a matter of timing but in our opinion, to have Sherwood Construction Limited carry out this work, albeit for a short period of time, together with the other factors present, constitutes a sufficient connection to allow for the continuation of bargaining rights to flow from Tri-City Construction to Sherwood Construction Limited on the Bonavista project.

For the above reasons the Board issued its order of 24 September, 1984.

ISSUED at St. John's this 8th day of January, 1985.

For the Board,

GORDON G. EASTON, Q.C.
Chairman

Appendix 8, Schedule B

IN THE MATTER OF

The Labour Relations Act, 1977

- and -

Newfoundland Fishermen, Food and
Allied Workers Union,
Local 1252 Applicant
(Complainant)

- and -

Cape St. Mary's Fisheries Limited
and Patrick Quinlan Respondents

BEFORE: The Newfoundland Labour Relations
Board on February 1st, 1984
and March 5th, 1984

Charles W. White, Q.C., Chairman
F. W. Russell, Member
J. Walsh, Member

APPEARANCES:	John J. Harris, Esq.	For the Applicant
	Gerald J. O'Brien, Esq.	For the Respondents

REASONS FOR DECISION:

This is a complaint lodged by the Applicant on behalf of itself and on behalf of Mrs. Beverly Butler and Mrs. Marilyn Crawley.

The complaint is lodged pursuant to Section 118 of The Labour Relations Act, 1977 ("The Act") alleging a violation of Section 24(1) of the Act. The Applicant alleges in its complaint that the Respondents (or persons acting on their behalf) did refuse to employ a person or otherwise discriminate against a person in regard to employment because that person is a member of a trade union.

By Order of the Board dated the 3rd day of August, 1981 the Applicant was certified as bargaining agent for a unit of employees at Cape St. Mary's Fisheries Limited, which company owns a fish plant at St. Mary's, St. Mary's Bay ("the Plant").

During the fall of 1981 and the spring of 1982 a negotiating committee of the Applicant and a negotiating committee of the Respondent company held meetings to try to reach a collective agreement. On March 22nd, 1982 the Applicant applied to the Minister for the appointment of a conciliation officer. No agreement was reached and the last meeting between the Applicant and the Respondent company was held during August of 1982. During the meetings no substantial progress was made towards a collective agreement.

In his evidence Mr. Reginald C. Anstey, business agent with the Applicant, gave his interpretation of matters which took place during the negotiating sessions. In particular Mr. Anstey gave evidence that at a negotiating meeting in March of 1982 where he was present (together with Mrs. Butler, Mrs. Crawley and Mr. David Burke representing the Applicant) Mr. Quinlan said to Mrs. Butler, Mrs. Crawley and Mr. Burke:... "I shouldn't worry about it, that you might not be there anyway". Mr. Anstey indicated that he took from this that Mr. Quinlan was threatening these three people.

Mr. Anstey indicated that the union filed an unfair labour practice complaint when Mrs. Butler and Mrs. Crawley were not rehired upon a subsequent re-opening of the Plant. He admitted that while the meeting with Mr. Quinlan took place in March of 1982, the complaint was not filed until June of 1983.

Mrs. Butler, Mrs. Crawley and Mr. Burke were members of the union local executive.

In her evidence Mrs. Butler indicated that she worked in the plant at all times while it operated except for short periods when crab au gratin was produced. She further stated that she was the second employee hired when the Plant first opened in 1980 and the second employee rehired on re-opening of the Plant in 1981 and 1982. She says that in April 1982 Mr. Quinlan held a meeting of the employees and told them he did not want any union activity in the Plant.

A layoff took place on September 25th, 1982 and from the evidence it would appear that the layoff may have been motivated so that other local employees would have an opportunity to obtain enough work to qualify for unemployment insurance benefits.

Following being laid off in September, 1982 Mrs. Butler indicated in her evidence that she received anonymous phone calls indicating that she had not been replaced by one of the new employees and that she had been laid off because she could not do her job. Subsequent to these calls she visited the Plant and met with Mr. Derek Philpott, manager of the Plant. The evidence of Mrs. Butler and Mr. Philpott as to what transpired at this meeting is totally contradictory. Mrs. Butler's interpretation was that it was a very low key meeting concerning why one of the new employees had not been assigned to do her previous work. She says that she simply asked him had a new employee been put on her job, and that he said "No". She then says that she said "Ok if that's the way you feel" and simply walked out.

Mr. Philpott relates a totally different interpretation of this meeting with Mrs. Butler. He says that Mrs. Butler was very emotional and that she said she was going to cause trouble and that he had not seen the last of her. Mr. Philpott indicated in his evidence that he interpreted these remarks as a threat to the company and he called Mr. Quinlan to tell him the situation. Mr. Philpott says that Mr. Quinlan told him to leave the matter in his hands. In his evidence Mr. Quinlan says that he was told by Mr. Philpott that Mrs. Butler had been in his office and had threatened the company. In response to a question from Mr. O'Brien, Mr. Quinlan said:

> "My attitude towards Mrs. Butler then was that I was not going to tolerate a threat in that form and that's my thought now. I didn't tolerate it then and I'm not going to tolerate it now."

When the Plant re-opened in April of 1983 Mrs. Butler was not recalled to work. She contends that she spoke with Mr. Quinlan and was told that she was not going to be recalled because she had been in conflict with the company in the past. In her evidence Mrs. Butler said in reference to a telephone conversation she had with Mr. Quinlan on May 31st, 1983:

> "I finally got a hold of him on the 31st of May about 5:30 in the evening and I asked him was I going to be called to work, you know, was I going to be recalled to work and he said no, and I asked him why. He said because you had confrontations.... with the company he said you had been in conflict of interest with this company. I said you know, what do you mean by that by this conflict of interest. Well he said I don't have to dot my i's and cross my t's where you are concerned. He said you have been in confrontation with the company. He said it wouldn't do you any good or me any good to have you working at the Plant. I asked him was I not recalled to work because of my work ability there, he said no. No, he didn't specify on it."

Mrs. Crawley started work in the plant in June of 1981 and there was no evidence that her job performance was below standard. She worked in the plant in June of 1982 and from September to December, 1982. She did not get recalled in 1983. She called Mr. Philpott and asked him why she wasn't being recalled to work. She says that he indicated that she had had confrontations with the company in the past and the company would be better off if she did not come back to work.

In his evidence Mr. Quinlan recounts his conversation with Mr. Philpott in reference to Mrs. Butler:

> "Derek (Philpott) said that the lady was in the office and she had threatened the company. So I took that as a very serious matter. In no way could we tolerate the threat. The operation was too vulnerable. There was enough trouble in the industry. So I told him to leave it with me."

During examination-in-chief relative to the nature of the vulnerability of the operation Mr. Quinlan indicated that he envisaged an illegal walkout, and also that the company was dealing with a very perishable product in "crab, caplin and that sort of thing". Hours could mean a loss of money. With respect to the failure to rehire Mrs. Crawley, Mr. Quinlan connected Mrs. Crawley with Mrs. Butler because of the union relationship and their friendship, but subsequently felt that he might have been wrong about Mrs. Crawley and asked Mr. Philpott to offer her a chance to work, which Mr. Quinlan says she declined.

With respect to Mrs. Crawley there is no evidence of any confrontation with the company except that she sat as a member of the bargaining committee. And there is no indication of any confrontation involving Mr. Burke, who maintained his job throughout while the Plant was open.

Evidence was called by the Applicant from Catherine Walsh who was not an employee and appears to have been called solely for the purpose of attempting to indicate anti-union sentiment on the part of Mr. Quinlan.

In essence, the Respondent company has argued that if it was discriminating against the union executive members because of their involvement in negotiations and union activities, why did it take the union in excess of a year to lay the complaint. Further, the Respondent company argued that Mrs. Crawley was hired in September of 1982 and that Mr. Burke has been rehired on each re-opening of the Plant. The suggestion is that the treatment of Mrs. Butler related to her specific actions in relation to the company.

Under the Act there is no "reverse onus" and consequently the burden of proof lies with the Applicant (Complainant). The Board has taken the position that the burden of proof is not as onerous in unfair labour practice charges as it is in most civil or quasi-criminal proceedings (Kenneth Critch et al) Applicants and Jones Construction Limited, Respondent, November 4th, 1983 decision of The Newfoundland Labour Relations Board. In its reasons the Board indicated that the reason for this is that the employer has knowledge of all the factors leading up to its final decision to terminate the employment of a union member. It would be almost impossible for the complainants to make out any sort of case, if the strict proof of each and every allegation of wrongdoing on the part of the employer had to be shown beyond a reasonable doubt. It is obvious that the union will very seldom have irrefutable proof of the alleged wrongdoing. At best, the union will suspect that the employer's actions are initiated by an anti-union animus but this conclusion is normally drawn inferentially from the actions of the employer viewed in the context of time, union activity, the overt actions of the employer's representatives and the statement of events subsequent to the discharges. In its reasons the Board in the Jones Construction Limited case reviewed the law relative to onus in labour relations cases.

On the evidence before the Board there does not appear to be any reason for the company to have been concerned about significant union activity until the problem with Mrs. Butler following her layoff in September 1982. Up to that time, the union did not appear to be active in any real sense. The last meeting was in August of 1982 and there had been a few meetings since certification. The union had not taken a strike vote nor called for a strike. As well, the company had given some of the employees a raise in pay. From the evidence it can be inferred that officials of the company felt that the return of Mrs. Butler to the Plant could be a threat in that she might try to activate the union which could cause labour matters to arise for the company. Mr. Quinlan appears to have tied Mrs. Crawley to Mrs. Butler. Mr. Quinlan considered Mrs. Butler a dangerous woman, not as an individual, but in relation to what she might do if the union became a major factor at the plant. In relation to Mrs. Crawley the company admits the mistake in laying her off and the reason for her not being recalled appears to have been rather weak. Mrs. Butler appears to have been much more active and there does not appear to have been any confrontations between Mrs. Crawley and the company and it was, indeed, indicated that she had a good work record. It seems that Mrs. Crawley was implicated simply because of her apparent close association with Mrs. Butler and with minimal consideration to her role in the union. It would not appear that Mr. Burke had a close association with Mrs. Butler or Mrs. Crawley, nor was he particularly active in the union.

In the view of the Board, Mrs. Crawley was not rehired simply because of her close association to Mrs. Butler. Mrs. Butler was vocal; Mrs. Crawley was close to Mrs. Butler; neither are rehired. Mr. Burke was not active nor vocal relative to the union, and was unaffected.

In summary, the Board found the evidence in this matter contradictory, but on balance feels that the limited onus on the union has been discharged.

The Board finds that the Respondent company Cape St. Mary's Fisheries Limited violated Section 24(1) of the Act.

The Board orders re-instatement of Beverly Butler and Marilyn Crawley with compensation from April 6th, 1983. In the event the parties are unable to agree on compensation the Board retains jurisdiction.

The appropriate Order will be issued by the Board.

Issued at St.John's this 18th day of September, A.D., 1984.

FOR THE BOARD

CHARLES W. WHITE, Q.C.
Vice-Chairman

F.W. Russell, Board Member dissents from the decision and has filed reasons.

IN THE MATTER OF

The Labour Relations Act, 1977

- and -

Newfoundland Fishermen, Food and
Allied Workers Union,
Local 1252 Applicant
(Complainant)

- and -

Cape St. Mary's Fisheries Limited
and Patrick Quinlan Respondents

BEFORE The Newfoundland Labour Relations
Board on February 1, 1984 and
March 5, 1984.

DISSENT FROM BOARD DECISION:

I have read the decision of the Board in the above matter and, with respect, I regret I must dissent from that decision.

Stripped of all other trappings the Board has convicted the respondent company of a violation of Section 24(1) (a) of the Act by basing its decision almost solely on the union version of two incidents which the union witnesses claimed indicated a strong anti-union animus by the company, they are:

(1) In the course of a negotiating meeting with the company on March 20, 1982 Mr. Quinlan is alleged to have said to Mr. Anstey, Mrs. Butler, Mrs. Crawley and Mrs. Burke that, " I shouldn't worry about it, that you might not be there anyway."

(2) About two weeks after she was laid off on September 25, 1982 Mrs. Butler came to the plant office and requested a meeting with Mr. Philpott, Manager of the plant. Although the Board cites

most aspects of the evidence given by Mrs. Butler and some given by Mr. Philpott and admits that their evidence is'totally contradictory'; for no substantive reason I could ascertain it has apparently opted for the Butler version in reaching its decision.

COMMENT ON REASON #1

The alleged statement by Quinlan took place at a negotiating meeting on March 20, 1982. The unfair labour practice charge was not filed until June 20, 1983, some fifteen months later. Following this alleged statement by Quinlan, Mrs. Butler was nevertheless employed with the company from April 5, 1982 until September 25, 1982.

The negotiating meeting which took place on March 20, 1982 was one of 6 or 8 meetings which took place in 1981 and 1982 following the Certification order of August 3, 1981. If we assume that seven (7) negotiating meetings actually took place and that each lasted for three (3) hours then the parties met for at least twenty-one (21) hours during which thousands of words were no doubt exchanged and, as is usual at times in negotiating meetings, emotions on both sides probably ran high. In the examination-in-chief of Mr. Quinlan, he said:

Q-------"do you recall the statement they said you made, 'what are you worrying about they may not have their job,' or words to that effect. Do you recall anything of that conversation?"

A "It is funny to pick out that single one because there was many we did not agree on. When the plant closed in July of 1981 we had 10,000 cases of canned crab which we couldn't sell. When we opened the plant in 1982 about half of that amount was still there."

Q "Still on your door?"

A "So my reason for saying to them that they might not be there, I may not be there at all either or any of the employees."

Q "You specifically threaten these people?"

A " No way."

In my opinion it was very naive of the union to bring forward for the hearing one statement allegedly made by Quinlan in the heat of negotiations which would have taken all of three seconds to make and equally naive of the Board to take it as an example of unfair labour practice by the company without apparently placing any weight at all on the version given by Quinlan as cited above.

Even if the Anstey/Butler version is accurate, and I find this difficult to believe in view of Quinlan's explanation, it was made in the heat of negotiations and certainly, in isolation, cannot be construed as confirming an anti-union animus on the part of the company.

Even Mrs. Butler in her evidence admitted under questioning that if there was any discrimination against her it was not before September of 1982.

In further evidence on this topic Mrs. Butler, during examination in chief, said:

Q "How did you understand that?" (ie. the statement from Quinlan)

A "Well, I took it as more or less telling us that we might not be there and our jobs weren't secure because we were, you know, that there was no guarantee that we would be working there."

Again, Mrs. Crawley during cross-examination stated that if she had been re-hired by the plant in the spring on 1983 she would not have had any reason to bring up the statement allegedly made by Quinlan at the negotiating meeting of March 20, 1982.

From the above it is apparent to me, therefore, that the union dredged up the statement allegedly made by Quinlan at their March 20, 1982 negotiating meeting as an attempt to prove anti-union sentiment on the part of Mr. Quinlan. The facts were, however, that although the union was certified on August 3, 1981 no collective agreement was ever concluded, the last negotiating meeting took place in May of 1982 and the alleged unfair labour practice took place on April 6, 1983 simply because Mrs. Butler was not hired at that time.

This company had an inactive certified union at the plant at St. Mary's. Mrs. Butler and the other two members of the union executive, Mrs. Crawley and Mr. Burke, were elected in 1981 and no meeting of the union had taken place since then where they stood for re-election or where a new executive could be elected in their place. All, or nearly all of the employees were members of the union. The union was inactive so the company had nothing to concern itself with from a union point of view and it is absurd to directly relate the non-hiring of Mrs. Butler in April of 1983 to a statement allegedly made by Quinlan in March of 1982.

From the evidence it appears that Mrs. Butler was under the impression that being President of the union gave her a special status and that she felt her job was guaranteed, and, in fact, the union sought this special status at negotiations. It is clear to me that because of this conviction she did her best to intimidate the company into retaining her on the job. It has been widely held that being a union executive confers no special status as to assurance of employment, that is, in the absence of a specific provision in the collective agreement. Here, there was no collective agreement and therefore no seniority provisions applying to hiring, lay-off or re-call from lay-off so if the company considered Mrs. Butler an undesirable employee they had every right not to re-hire her.

In fact, if the company wanted labour peace and presumably the continuation of an inactive union they could have bowed to Mrs. Butler's threats and intimation and hired her back on. This is clear confirmation that they did not consider Mrs. Butler in the "union" context at all but only as an undesirable employee they did not wish to continue to employ. In fact, in his evidence Mr. Philpott said he pointed out to Mrs. Butler that she was no different than anyone else.

COMMENT ON REASON #2

In its decision the Board has said that the evidence of Mrs. Butler and Mr. Philpott concerning the meeting which took place in October of 1982 in Philpott's office, about two weeks after the lay-off of September 25, 1982 is 'totally contradictory'. Notwithstanding this finding the Board appears to have then opted for Mrs. Butler's version of the meeting and decided the company should be convicted of an unfair labour practice charge. The Board must have followed this reasoning because there were basically only these two incidents arising from evidence given at the hearing which were cited in its decision.

I found the evidence of Mr. Philpott to be very convincing. According to the evidence of Mr. Philpott the meeting between Butler and Philpott lasted about five minutes yet Mrs. Butler's evidence is that she went into Philpott's office and asked him, "Did you replace me with a new worker?, and he answered, no, so she said, if that is the way you feel, and walked out." This exchange couldn't have taken more than twenty seconds. Mr. Philpott's evidence was that they had a prolonged exchange during which Mrs. Butler became very emotional and she said she was going to cause trouble for him. Towards the end of their discussion she stormed out of his office into the outer office and when she was going through the door she said, "you haven't seen the last of me yet."

Mr. Philpott took the above as a direct threat and felt that it could have serious consequences for the company. He was so concerned he reported the conversation to Mr. Quinlan who said he would handle it.

Mr. Quinlan's evidence before the Board was entirely consistent with that of Mr. Philpott. Management considered Mrs. Butler a threat to the orderly operation of the plant and they felt they could do without that so in the spring of 1983 Mrs. Butler and her close associate, Mrs. Crawley, were not hired. In doing this, as I have said earlier, the company was completely within its rights. The question of union membership or activity or the fact that Butler and Crawley were executive members of the union simply did not arise and *there was no evidence to this effect given at the hearing*. From the evidence it *is* clear that Mrs. Butler did not approach Mr. Philpott on behalf of the union, on union business or as an executive member of the union - she approached Philpott entirely and exclusively on her own behalf.

The conclusion reached by the Board on page 8 of its decision, namely that, "From the evidence it can be inferred that officials of the company felt that the return of Mrs. Butler to the plant could be a threat in that she might try to activate the union which could cause labour matters to arise for the company "cannot, in my opinion, be inferred from any of the evidence and I consider it to be pure speculation without fact or foundation. I also consider the statement on page 7 of the decision, second paragraph, to fall in the same category. That statement is, "On the evidence there does not appear to be any reason for the company to have been concerned about significant union activity until the problem with Mrs. Butler following her layoff in September 1982. Up to that time the union did not appear to be active in any real sense." Here again the Board, in my opinion, is stretching the facts for there was no evidence to indicate there was any union activity in September of 1982 or from then up to April of 1983.

In view of the above I would find that the evidence given by Mrs. Butler and Mr. Philpott was, as the Board has said, "totally contradictory". Having arrived at this conclusion I would have concluded that the evidence does not point one way or the other and I would not, therefore, have considered it in making a finding.

GENERAL

I must take issue with the Board decision on page 8 where it states there is only a limited onus on the union. I feel that the standard of proof here is on the balance of probabilities. There is no substantial jurisprudence to indicate that the burden is any less in non-discharge unfair labour practice cases than in any other proceeding before the Board. That is, if the evidence is such that the Board can say, "we think it is more probable than not," the burden is discharged, but, if the probabilities are equal, it is not.

The Newfoundland Labour Relations Board decision of November 4, 1983 involving Jones Construction Limited is cited as a precedent for modifying the onus. The Jones Construction Limited case dealt with termination of employment and because it was assumed the employer had knowledge of all the factors leading up to its decision to terminate the employment of union members the onus on the union was considered somewhat less than in a regular proceeding before the Board. While I dissented from the Jones Construction Limited decision and do not necessarily agree with the reasoning on onus the circumstances are not at all the same in this case.

Here, there was no collective agreement in force, there was no termination of employment and there was absolutely no evidence to indicate that membership in a trade union was at all a factor when Mrs. Butler and Mrs. Crawley were not hired in April of 1983. Thus I would consider the Jones Construction Limited case to be completely dissimilar and I see no reason why the onus should be modified in this case.

Section 24 (1) (a) of the Newfoundland Labour Relations Act states:

> "No employer and no person acting on behalf of an employer shall
>
> (a) refuse to employ or to continue to employ any person, or otherwise discriminate against any person in regard to employment because that person is a member of a trade union"

What the union considered to be two major incidents were put forward by them as proving the violation of the above section. The Board, in its decision, was obviously swayed by these reasons and apparently accepted the union's version of same in arriving at its decision. I believe the Board erred in so doing because, as detailed in this dissent, I believe there was nothing at all conclusive from the union evidence in either instance and I feel that the probabilities in each were, at best, equal. Having said that it follows that I feel the burden on the union of proving that Mrs. Butler and Mrs. Crawley were not hired in April of 1983 because they were members of a union has not been discharged by the union and I would dismiss the complaint.

Respectfully submitted,

F.W. Russell

Appendix 9, Schedule B

IN THE MATTER OF
The Labour Relations Act, 1977

- and -

International Brotherhood of
Electrical Workers, Local
2330 Applicant

- and -

D.H. Electric Limited,
Sunnyside Respondent

BEFORE: Gordon G. Easton, Q.C., Chairman
R. Gosse and G. Gillingham,
Members.

R. Emberly for the Applicant
Corwin Mills for the Respondent

REASONS FOR DECISION:

This is an application for certification received from International Brotherhood of Electrical Workers, Local 2330, for a unit of employees of D.H. Electric Limited, Sunnyside. The application was received by the Board on September 8, 1983, and heard on 1 November, 1983. Following the hearing, the Board certified the applicant for a unit of employees comprising Electricians, Electrician Apprentices, and Working Electrician Foremen.

Evidence revealed that the respondent is a small electrical contractor involved in commercial and residential construction around the East Coast of the Province. The respondent has had a fluctuating work force with a maximum of seven (7) employees. At the date of the application, the respondent employed six (6) electricians or apprentices.

The respondent argues that this is not a normal situation and the Board should vary from the date of the application in determining support for the union. The respondent further argues that the union initiated the action on certification and not the employees and in this situation the Board should conduct a representation vote.

The applicant argued that contact was made with the employees prior to an application being made to the Board. The applicant further argues that fluctuations in the construction industry are normal and the union relies on the report of the investigating officer with respect to membership support.

The Board has dealt with many applications in the construction industry and has maintained a policy of adhering to the date of the application in determining membership support. It is not unusual in the construction industry for an employer's work force to fluctuate greatly. The fluctuations in this case do not appear to be unusual. In this situation the Board saw no reason to conduct a representation vote to determine the wishes of employees. Again it is not unusual for an employer to have one or no employees at any particular time. The Board saw no reason to vary from the date of application in determining membership support and issued its order of 1 November, 1983.

ISSUED at St. John's this 30th day of January, 1984.

For the Board,

GORDON G. EASTON, Q.C.
Chairman

Appendix 10, Schedule B

IN THE MATTER OF

The Labour Relations Act, 1977
("the Act")

- and -

Newfoundland Fishermen, Food
and Allied Workers, Local
1252 chartered by United Food
and Commercial Workers
International Union,
("the Union") Applicant

- and -

Cape Pine Fisheries Limited
("the Employer"), Respondent.

BEFORE: Gordon G. Easton, Q.C., Chairman;
F.W. Russell and G. Gillingham, Members.

REASONS FOR DECISION:

This is an application pursuant to Section 89 of The Labour Relations Act, 1977, received from Newfoundland Fishermen, Food and Allied Workers, Local 1252, chartered by United Food and Commercial Workers International Union, ("the Union"), requesting the Labour Relations Board to rule that Cape Pine Fisheries Limited ("the Employer") is bound by the collective agreement in effect between Newfoundland Fishermen, Food and Allied Workers, Local 1252, chartered by United Food and Commercial Workers International Union and Newfoundland Quick Freeze Limited because of a sale pursuant to the Act.

Newfoundland Quick Freeze Limited (NQF) operated several fish processing plants in the province including plants at Witless Bay, St. Brides, and Petty Harbour. There is a collective agreement in effect between the union and NQF with effect from 1 January, 1980 and expiring on 31 December, 1982. Evidence before the Board reveals that NQF was placed in voluntary liquidation by its parent corporation, Rich Seapack and was ordered to cease production on 31 December, 1981. A former senior officer of NQF, Mr. Arthur O'Brien, was appointed liquidator. Following the appointment of the liquidator, an agreement was reached between Rich Seapack and a second subsidary company, Rich Products Canada Limited, to have the latter purchase the assets of NQF.

The Witless Bay plant operated in the winter season where possible as it processed Northern Cod when it was available. When NQF was placed in liquidation, it had a quantity of Northern Cod on hand. This fish was turned over to the Fisheries Association for distribution to other fish plants.

Evidence presented by the Company also shows that the assets of NQF were offered for sale, to any interested buyer, through the Minister of Fisheries. Officials of the Company contacted the Deputy Minister of Fisheries and indicated an interest in the assets of NQF. Through the office of the Minister of Fisheries and the member of the House of Assembly for the area, an agreement was reached for the purchase of the assets. As part of the deal, the Company insisted that it be granted a crab license for the Witless Bay plant.

The mode of operation of the Witless Bay plant has changed from basically a freezer plant primarily for the various feeder plants to a machine operation. Work previously done by employees was now basically mechanized with fewer persons employed. The plant at Petty Harbour was closed as a ground fish operation and was leased to Newfoundland Food Processors and others for processing crab. The St. Brides plant was changed from a filleting operation to a split cod operation that only required a small percentage of the previous staff.

As part of the deal, the Company purchased certain packaging with the provision that the Avalon brand name could be used.

The Company argues that Rich Products Canada Limited was never an employer within the meaning of the Act.

The Company argues that NQF effectively ceased operations in Newfoundland. The plant had operated as a packaging and freezing plant not a fish cutting plant. The current operation is basically geared to the inshore fishery whereas NQF basically operated on a year round basis since it was involved in processing Northern Cod.

The current Witless Bay plant barely resembles the NQF plant. The old plant used little or no machinery and was basically a freezing and packaging operation. The present plant is totally mechanized. The Petty Harbour plant now operates as a crab plant and had previously operated as a ground fish plant.

The Company argues that it had little involvement in the determination of a price for the assets. The Company contends that the Minister of Fisheries set the price through negotiations with the owners of NQF. All negotiations by the Company were with the Minister of Fisheries or the member of the House of Assembly for the area.

The Company also argues that the flow between NQF and the Company was broken. No goodwill purchased; no accounts receivable purchased; only non-fixed assets were Avalon brand packages and some spare parts.

As an alternative, the Company argues that the Board should hold a vote since there would be an intermingling of union and non-union employees.

The union argues that the employees have a vested interest in the Company's operation. The actual transfer of assets was made between the parties. Only the arrangements were made through the office of the Minister of Fisheries.

When the assets were transferred to Rich Products Canada Limited, the collective agreement between the union and NQF was also transferred.

The union further argues that NQF was in the business of fish processing and the Company is also in that business. No evidence before the Board to show if Rich Products Canada Limited did or did not have employees.

The Labour Relations Board has dealt with a number of cases pursuant to Section 89 of the Act. It is apparent that each case will have to be decided on its own merits.

In this case it appears a decision was made by Rich Seapack to divest itself of its Newfoundland operations (NQF). In December of 1981 NQF was placed in liquidation and was ordered to cease operations on December 31, 1981. At about that same time a decision was made by Rich Products Canada Limited, also a subsidary of Rich Seapack, to purchase the assets of NQF. Apparently this agreement was never executed.

During the early part of 1982 it appeared the Newfoundland Government became involved through the Minister of Fisheries. Negotiations were carried on and the company indicated an interest in purchasing the assets. Following the negotiations, the Company made a deal with Rich Products Canada Limited. The Company contends that the flow of the business between the Company and NQF was broken. The Board in A.J. Coleman and Sons Limited (unreported) dealt with the matter of a third party involvement in the sale of a business. In the Coleman case the sale was made through a receiver/manager and in that case the Board held that there was a sale within the meaning of Section 89 of the Act. In this case the sale was made between Rich Products Canada Limited and the Company although NQF was signatory to the collective agreement with the union.

In the Coleman decision the Board referred to an Ontario Labour Relations Board decision Gordon Markets Limited and Retail Clerks Union, Local 206, C.L.B.R. 1978 Volume 2, p. 460. In that case the Ontario Board on page 463 observed that:

> "Consistent with the two-fold purpose of Section 55 which is to both prevent the undermining of bargaining rights and provide a permanence for established bargaining rights and consistent with the broad interpretation the Board has given to the definition of "sell" in recognition of the aims of the section (see Thorco Manufacturing Co., 65 CLLC 787), the Board has repeatedly held that the lack of direct contact or transfer between the predecessor and successor employees will not automatically defeat a section 55 application. The Board, for example, has found the existence of a section 55 sale in numerous receivership cases where the predessor employer has gone into receivership and the receiver rather than the original employer has transferred the business to a successor employer (see Marvel Jewellry Limited

> 1975 OLRB Rep. Sept. 733 among others). In Winiker Industrial Auctioneers Ltd., 1978 OLRB Rep. Jan. 15, the Board stated that "it makes no difference whether the business has been transferred directly from the employer named in the collective agreement (or for which the union hold bargaining rights) or whether it has been transferred through a receiver, or some other intermediary". (Our underlining)

In this case the result of the transaction was that the Company acquired fish plants at Witless Bay, Petty Harbour and St. Brides.

The Company contends that the nature of the business had changed significantly from the business carried on by NQF. The Board is unable to agree that there has been a substantial change. The NQF operation was primarily an inshore operation that did limited processing of Northern Cod in the winter months. The present operation of the Company is that of fish processing. Although the plant has been mechanized, it is still in the business of processing fish. The Company, in this case, purchased a fish processing facility. It used the Avalon brand name of NQF and carried on the operation with a short a break that normally occured every year except for limited processing of Northern Cod. The Board was satisfied that the Company was operating substantially the same business as did NQF.

The Board saw no need to order a representation vote based on the argument of the Company that there was an intermingling of union and non-union employees. In the case of Canadian Union of Industrial Employees and Bermay Corporation Limited and Goldcrest Furniture Limited 1980 1 CLRBR p. 382, cited by the solicitor for the Company, the Ontario Board ordered a representation vote. In that case Bermay Corporation

Limited had some seventy (70) employees, twenty-four (24) of whom were represented by the applicant union in bargaining with Goldcrest Furniture Limited.

In the present case there is no evidence that the Company had any employees prior to its purchase and operate the plants formerly operated by NQF. The Company solicitor may be referring to the fact that some of the persons working in the plant may not be members of the union. There is no evidence before the Board to show if the present employees are or are not members of the applicant. In any event there was no intermingling of union and non-union employees as was the case in the Bermay Corporation case.

The Board was satisfied that there was a sale of a business betweeen NQF and Rich Products Canada Limited and subsequently between Rich Products Canada Limited and Cape Pine Fisheries Limited. Although the Company argued that Rich Products Canada Limited was not an employer within the meaning of the Act, there is no evidence before the Board to show whether or not Rich Products had any employees when it purchased NQF.

ISSUED at St. John's this 1st day of June, 1984.

For the Board,

GORDON G. EASTON, Q.C.
Chairman

Schedule "C"

The Fishing Industry (Collective Bargaining) Act, 1971

Statement of Proceedings Before The Board

during the year, 1984

No. of Applications pending at 1 January, 1984	0
No. of Applications filed during the year	3
No. of Applications Granted	1
No. of Applications pending 31 December, 1984	2

Applications For Certification - Granted

1. Newfoundland Fishermen, Food and Allied Workers, Local 1252, chartered by United Food and Commercial Workers' International Union, and

   National Sea Products Limited, St. John's, and

   Bay St. George Seafoods Limited, Stephenville, and

   Gemini Lobster Limited, Stephenville, and

   Humber Cold Storage Limited, Corner Brook, and

   T. & H. Fisheries Limited, Corner Brook, and

   Belle Isle Seafoods Limited, Stephenville, and

   Clearwater Lobster, Picadilly, and

   Harbour Seafoods Limited, Rocky Harbour, and

   Allen's Limited, Benoit's Cove, and

   T. J. Hardy Company Limited, Port-Aux-Basques, and

   Tourout Enterprises Limited, Picadilly, and

   United Maritime Fishermen's Co-Op, Moncton, N.B.

Decision

The Board, following investigation and consideration of the representations of the interested parties, ordered that Newfoundland Fishermen, Food and Allied Workers, Local 1252, chartered by United Food and Commercial Workers' International Union be certified the bargaining agent of the fishermen in the area from St. Theresa, Bay St. George to Rocky Harbour, inclusive, and that the said order of certification shall apply to all operators purchasing fish within the said area.

There are 739 employees in the bargaining unit.

Applications Pending Before The Board

1. Newfoundland Fishermen, Food and Allied Workers, Local 1252 and Fishery Products International.
2. Fishery Products International and Newfoundland Fishermen, Food and Allied Workers, Local 1252.

Schedule "D"

The Public Service (Collective Bargaining) Act, 1973

Statement of Proceedings Before the Board during the year, 1984

Applications for Certification

1.	Number of Applications pending 1 January, 1984	0
2.	Number of Applications filed during the year	1
3.	Total Applications dealt with by the Board	0
4.	Number of Applications pending at 31 December, 1984	1

Miscellaneous Applications

1.	Application pending 1 January, 1984	8	
2.	Applications received under Section 10 - Declaration of Essential Employees	48	
3.	Applications received under Section 39 - Grievances and Successor Rights	3	
4.	Applications received under Section 40 - Reconsideration and Amendments of Decision	7	
5.	Total Miscellaneous applications		66
6.	Total miscellaneous applications dealt with by the Board		15
7.	Total applications pending 31 December, 1984		51
	Number of Representation Votes conducted	1	

Schedule "E"

The Public Service (Collective Bargaining) Act, 1973

Statement of Proceedings Before the Board during 1984

Applications for Certification

1. Newfoundland Nurses' Union and Carmelite House, Grand Falls

   The matter is pending before the Board.

Applications Pursuant to Section 10 of the Act Declaration of Essential Employees

1. The General Hospital Corporation and The Professional Association of Interns and Residents of Newfoundland.

   The matter was lapsed.

2. Dr. Charles A. Janeway Child Health Centre and The Professional Association of Interns and Residents of Newfoundland

   The matter was lapsed.

3. Harry L. Paddon Memorial Home, Happy Valley, and Newfoundland Association of Public Employees.

   The application was withdrawn.

4. Harry L. Paddon Memorial Home, Happy Valley, and Newfoundland Nurses' Union

   The application was withdrawn.

5. The Carbonear General Hospital and Newfoundland Association of Public Employees

   The matter is pending before the Board.

6. The Carbonear General Hospital and Canadian Union of Public Employees

   The matter is pending before the Board.

7. Central Newfoundland Hospital Corporation, Grand Falls and Newfoundland Association of Public Employees (Lab. & X-Ray)

   The matter is pending before the Board.

8. A. M. Guy Memorial Hospital, Buchans and Newfoundland Association of Public Employees (Lab & X-Ray)

   The matter is pending before the Board.

9. A. M. Guy Memorial Hospital, Buchans and Newfoundland Nurses' Union (Essential Employees)

   The matter is pending before the Board.

10. A. M. Guy Memorial Hospital, Buchans and Newfoundland Association of Public Employees (Hospital Support Staff)

    The matter is pending before the Board.

11. Notre Dame Bay Memorial Hospital, Twillingate and Newfoundland Nurses' Union

    The matter is pending before the Board.

12. Notre Dame Bay Memorial Hospital (Lab & X-Ray) and Newfoundland Association of Public Employees

    The matter is pending before the Board.

13. Carbonear General Hospital and Newfoundland Nurses' Union

    The matter is pending before the Board.

14. Blue Crest Inter-Faith Home and Newfoundland Association of Public Employees, Local 9204

    The matter is pending before the Board.

15. The Agnes Pratt Home, St. John's and Newfoundland Association of Public Employees

The matter is pending before the Board.

16. The Salvation Army Grace General Hospital, St. John's and Newfoundland Association of Public Employees (Lab & X-Ray)

The matter is pending before the Board.

17. Green Bay Health Care Centre and Newfoundland Nurses' Union

The matter is pending before the Board.

18. Green Bay Health Care Centre and Newfoundland Association of Public Employees

The matter is pending before the Board.

19. Masonic Park and Newfoundland Association of Public Employees

The matter is pending before the Board.

20. Interfaith Home for Senior Citizens, Corner Brook and Canadian Union of Public Employees

The Matter is pending before the Board.

21. Charles S. Curtis Memorial Hospital, St. Anthony and Newfoundland Association of Public Employees

The matter is pending before the Board.

22. Charles S. Curtis Memorial Hospital, St. Anthony and Newfoundland Nurses' Union

The matter is pending before the Board.

23. Charles S. Curtis Memorial Hospital, St. Anthony and Canadian Union of Public Employees

The matter is pending before the Board.

24. Glenbrook Lodge and Newfoundland Nurses' Union

The matter is pending before the Board.

25. Glenbrook Lodge and Canadian Union of Public Employees

The matter is pending before the Board.

26. Janeway Child Health Centre and Newfoundland Association of Public Employees (Support Staff)

The matter is pending before the Board.

27. Janeway Child Health Centre and Newfoundland Association of Public Employees (Lab & X-Ray)

The matter is pending before the Board.

28. Janeway Child Health Centre and Association of Allied Health Professionals, Newfoundland and Labrador

The matter is pending before the Board.

29. Carmelite House, Grand Falls and Canadian Union of Public Employees, Local 990

The matter is pending before the Board.

30. The Harry L. Paddon Memorial Home, Happy Valley and Newfoundland Nurses' Union

The matter is pending before the Board.

31. The Harry L. Paddon Memorial Home, Happy Valley and Newfoundland Association of Public Employees (Support Staff)

The matter is pending before the Board.

32. International Brotherhood of Electrical Workers, Local 1615 and Newfoundland and Labrador Hydro

The matter is pending before the Board.

33. Lakeside Homes, Limited and Newfoundland Association of Public Employees

The matter is pending before the Board.

34. Lakeside Homes, Limited and Newfoundland Nurses' Union

The matter is pending before the Board.

35. Melville Hospital and Newfoundland Association of Public Employees (Support Staff)

The matter is pending before the Board.

36. Melville Hospital and Newfoundland Association of Public Employees (Lab. & X-Ray)

The matter is pending before the Board.

37. Melville Hospital and Newfoundland Nurses' Union

The matter is pending before the Board.

38. Melville Hospital and Allied Health Professional Employees

The matter is pending before the Board.

39. Blue Crest Inter-Faith Home, Grand Bank and Newfoundland Association of Public Employees

The matter is pending before the Board.

40. Captain William Jackman Memorial Hospital and Canadian Union of Public Employees, Local 1581

The matter is pending before the Board.

41. North Haven Manor Senior Citizen's Home and Newfoundland Association of Public Employees

The matter is pending before the Board.

42. Captain William Jackman Memorial Hospital and Newfoundland Association of Public Employees

The matter is pending before the Board.

43. Boonews Lodge, Badger's Quay and Newfoundland Association of Public Employees

The matter is pending before the Board.

44. Bay St. George Senior Citizens' Home and Newfoundland Association of Public Employees

The matter is pending before the Board.

45. Sir Thomas Roddick Hospital, Stephenville and Newfoundland Association of Public Employees (Lab & X-Ray)

The matter is pending before the Board.

46. Sir Thomas Roddick Hospital, Stephenville and Newfoundland Association of Public Employees (Support Staff)

The matter is pending before the Board.

47. Sir Thomas Roddick Hospital, Stephenville and Newfoundland Nurses' Union

The matter is pending before the Board.

48. Dr. Charles L. LeGrow Health Centre, Port Aux Basques and Newfoundland Association of Public Employees (Lab & X-Ray)

The matter is pending before the Board.

49. Dr. Charles L. LeGrow Health Centre, Port Aux Basques and Newfoundland Association of Public Employees (Support Staff)

The matter is pending before the Board.

50. Dr. Charles L. LeGrow Health Centre, Port Aux Basques and Newfoundland Nurses' Union

The matter is pending before the Board.

Applications Pursuant to Section 39 Grievance and Successor Rights

1. Canadian Union of Public Employees, Local 1644 and Grenfell Regional Health Services

Decision

The Board, following investigation and consideration of the representation of the interested parties, determined that there was a transfer pursuant to Section 39 of the Act between Charles S. Curtis Memorial Hospital and Grenfell Regional Health Services and further determined the appropriate bargaining unit to be all employees of the controller office save and except Controller and Accountant.

The Board ordered that a representation vote be conducted to determine the wishes of the employees and subsequently the employees rejected the Union.

Applications Pursuant to Section 40 Reconsideration and Amendment of Decision

1. Newfoundland Association of Public Employees and Government of Newfoundland and Labrador as represented by Treasury Board.

Decision

The Labour Relations Board received an application from Newfoundland Association of Public Employees to determine the "General Service" bargaining unit. The Newfoundland Association of Public Employees and the Government of Newfoundland and Labrador as represented by Treasury Board informed the Board that agreement was reached on all classifications in the Department of Health, thus the Board ordered that the classifications listed in the attached Appendix "1" of Schedule "E" be included in the bargaining unit and the classifications in the attached Appendix "2" of Schedule "E" be excluded from the bargaining unit.

The Board received notification that the Newfoundland Association of Public Employees and the Government of Newfoundland and Labrador as represented by Treasury Board, had agreed on all classifications in the Department of Rural, Agricultural and Northern Development, thus the Board ordered that the classification listed in the attached Appendix "3" of Schedule "E" be included in the bargaining unit and the classifications in the attached Appendix "4" of Schedule "E" be excluded from the bargaining unit.

2. Central Newfoundland Regional Health Centre, Grand Falls and Newfoundland Nurses' Union

Decision

The Board received a statement in writing from Central Newfoundland Hospital of the number of employees employed by the Employer in each classification in the bargaining unit who are considered by the Employer to be essential employees and since the parties notified the Board of their agreement on the number of employees to be designated as essential employees. Thus the Board ordered that the number of employees in each classification as specified in Appendix "5" of Schedule "E" are designated as essential employees within the meaning of Section 10 of The Public Service (Collective Bargaining) Act, 1973, as amended.

3. International Brotherhood of Electrical Workers, Local 1615 and Newfoundland and Labrador Hydro

Decision

The Employer requested the Board to amend its order of June 19, 1975 to classify certain employees in the bargaining unit as essential and as no reply was received from the Union within the time prescribed by the Board Rules of Procedure, therefore, the Board ordered that the number of employees in the Employer's application are deemed to be essential employees within the meaning of the Public Service (Collective Bargaining) Act.

4. The Association of Allied Health Professionals: Newfoundland and Labrador and The Children's Hospital Corporation; Central Newfoundland Regional Health Centre; and the General Hospital Corporation; and Newfoundland Association of Public Employees

Decision

The Board, following investigation and consideration of the representations of the interested parties ordered that the certification order issued to The Association of Allied Health Professionals: Newfoundland and Labrador be amended to include the classification of Speech Pathologist.

5. Western Memorial Hospital Corporation, Corner Brook, and Canadian Union of Public Employees, Local 488

Decision

The Board, following investigation and consideration of the representations of the interested parties ordered that the certification order issued to Canadian Union of Public Employees, Local 488, on the 5th day of May, 1967 be amended to exclude the classification of Housekeeping Supervisor.

6. James Paton Memorial Hospital, Gander, and Newfoundland Nurses' Union

Decision

The Board, following investigation and consideration of the representations of the interested parties saw no reason to amend the order and rejected the application.

7. St. Patrick's Mercy Home, St. John's and Canadian Union of Public Employees, Local 879

Decision

The Board, following investigation and consideration of the representations of the interested parties saw no reason to exclude the classification as requested and rejected the application.

8. International Brotherhood of Electrical Workers, Local 1615 and Newfoundland and Labrador Hydro

Decision

The Board, following consideration of the representations of the interested parties decided that it did not have jurisdiction to amend an order issued pursuant to Section 10(2) of the Act, and rejected the application.

9. College of Fisheries, Navigation, Marine Engineering and Electronics, and College of Fisheries Faculty Association

The application was withdrawn.

10. Newfoundland Association of Public Employees and The General Hospital Corporation, St. John's

The matter was lapsed.

11. Salvation Army Grace General Hospital, St. John's and Newfoundland Nurses' Union

The matter is pending before the Board.

12. Newfoundland Association of Public Employees _and_ Government of Newfoundland and Labrador as represented by Treasury Board

    The matter is pending before the Board.

13. Newfoundland Nurses' Union _and_ Central Newfoundland Hospital, Grand Falls

    The matter is pending before the Board.

14. The Salvation Army Grace General Hospital, St. John's _and_ Canadian Union of Public Employees, Local 1271

    The matter is pending before the Board.

Appendix 1 - Schedule E

Department of Health - Included

1. Mail and Messenger Clerk II
2. Clerk I
3. Clerk II
4. Clerk III
5. Clerk IV
6. Clerk-Typist I
7. Clerk-Typist II
8. Clerk-Typist III
9. Clerk-Stenographer I
10. Clerk-Stenographer II
11. Clerk-Stenographer III
12. Dental Claims Assessor I
13. Dental Claims Assessor II
14. Dental Claims Assessment Supervisor
15. Accounting Clerk I
16. Accounting Clerk II
17. Accountant I
18. Accountant II (Cottage Hospitals)
19. Management Analyst II
20. Buyer I
21. Departmental Program Co-ordinator
22. Regional Nutritionist
23. Health Education Assistant
24. Regional Health Educator
25. Program Planning Officers (Health Care Delivery Systems)
26. Family Health Officer
27. Family Planning Consultant
28. Co-ordinator of Assessments and Placements
29. Driver/Dental Assistant
30. Dental Hygienist II
31. Pharmaceutical Consultant

32. Psychologist Consultant
33. Air Ambulance Co-ordinator
34. Director of Provincial Ambulance Services
35. Environmental Health Specialist (Trainee)
36. Environmental Health Specialist I
37. Environmental Health Specialist II
38. Environmental Health Specialist III
39. Environmental Health District Administrator
40. Social Work Consultant

Appendix 2 - Schedule E

Department of Health - Excluded

1. Deputy Minister
2. Associate Deputy Minister
3. Assistant Deputy Ministers
4. Secretary to the Deputy Minister
5. Secretary to the Associate Deputy Minister
6. Secretary to the Assistant Deputy Minister
7. Secretary to the Minister
8. Secretary to the Director of Administration
9. (Word Processing Equipment Operator I)
10. Registrar of Vital Statistics
11. Registrar II
12. Accountant III (Financial Services)
13. Accountant III (Hospital Services Division)
14. Financial Manager
15. Manager, Internal Health Audits
16. Personnel Specialist I
17. Systems Manager
18. Departmental Employee Relations Officer
19. Director of Administration III
20. Director of Health Nutrition
21. Director of Health Education
22. Emergency Health Services Director
23. Director of Health Manpower Planning
24. Director of Health Facility Planning
25. Director of Health Care Research
26. Director of Health Policy
27. Director of Program Review and Evaluation
28. Hospital Consultant
29. Assistant Hospital Services Director
30. Hospital Services Director
31. Environmental Health Regional Manager
32. Director of Environmental Health Services

33. Administrator, Government Hospital and Medical Services
34. Dietary Consultant
35. Departmental Physicians and Dentists

Appendix 3 - Schedule E

Department of Rural, Agricultural and Northern Development - Included

1. Clerk I
2. Clerk II
3. Clerk III
4. Clerk-Typist I
5. Clerk-Typist II
6. Clerk-Stenographer I
7. Clerk-Stenographer II
8. Clerk-Stenographer III
9. Accounting Clerk I
10. Accounting Clerk II
11. Accountant I
12. Statistical Officer
13. Statistician II
14. Economist I
15. Economist II
16. Systems Analyst
17. Buyer I
18. Buyer II
19. Administrative Officer I
20. Administrative Officer II (Agriculture Administration)
21. Marketing Specialist
22. Rural Development Information Specialist
23. Supervisor of Policy Research
24. Crafts Development Officer
25. Crafts Marketing Specialist
26. Crafts Design Specialist
27. Supervisor of Craft Development
28. Audio-Visual Specialist
29. Housing Development Officer
30. Engineering Technician II
31. Draughtsman II

32. Cartographic Technician (Draughting) I
33. Cartographic Technician (Draughting) II
34. Agricultural Technician
35. Agricultural Resource Centre Manager
36. Agricultrist I
37. Agricultrist II
38. Agricultrist III
39. Manager, Farm Development Programs
40. Livestock Geneticist
41. Director of Farm Business and Evaluation
42. Veterinarian
43. Soil and Plant Laboratory Supervisor
44. Agricultural Laboratory Technician I
45. Agricultural Laboratory Technician II
46. Forestry Technician I
47. Forestry Technician II
48. Land Use Technician
49. Social Development Specialist
50. Native Employment Officer
51. General Retail Store Clerk
52. Northern Labrador Retail Store-Assistant Manager
53. Northern Labrador Retail Store Manager
54. Business Management Consultant
55. Business Development Specialist
56. Regional Development Specialist
57. Community Development Officer
58. Assistant Manager, Farm Development Loans
59. Assistant Manager, Rural Development Incentive Loans
60. Director of Community Consolidation
61. Co-operative Development Specialist
62. Co-operative Housing Specialist
63. Credit Unit Specialist
64. Co-operative Education Specialist
65. Co-operative Development Supervisor
66. Production Management Consultant
67. Home Economics Specialist

Appendix 4 - Schedule E

Department of Rural, Agricultural and Northern Development - Excluded

1. Deputy Minister
2. Assistant Deputy Minister
3. Clerk-Stenographer II (Secretary to the Director of Administration)
4. Secretary to Minister
5. Secretary to Deputy Minister
6. Secretary to Assistant Deputy Minister
7. Registrar I
8. Accountant III (Chief Accountant)
9. Financial Manager
10. Personnel Specialist I
11. Director of Administration II
12. Swine Breeding Station Manager
13. Regional Agricultural Supervisor
14. Supervisor of Agricultural Services
15. Director of Agricultural Extension and Veterinary Services
16. Director of Production and Market Planning
17. Director of Soil and Land Management
18. Provincial Veterinarian
19. Regional Land Use Supervisor
20. Soil Survey Supervisor
21. Labrador Field Operations Supervisor
22. Director of Labrador Operations
23. Director of Labrador Development
24. Business Development Supervisor
25. Regional Development Supervisor
26. Director of Home Industry
27. Director of Rural Extension
28. Director of Research and Analysis
29. Supervisor of Business Management and Advisory Services
30. Manager, Incentive Loans Programmes
31. Director of Co-operative Development

Appendix 5, Schedule E

IN THE MATTER OF

The Public Service (Collective
Bargaining) Act, 1973, as amended,

- and -

Central Newfoundland Regional Health Center, Grand Falls,	Employer

- and -

Newfoundland Nurses' Union,	Bargaining Agent,

WHEREAS pursuant to Section 10 of The Public Service (Collective Bargaining) Act, 1973, as amended, Central Newfoundland Regional Health Centre, Grand Falls, has supplied to The Labour Relations Board a statement in writing of the number of employees employed by the Employer in each classification in the bargaining unit represented by the Bargaining Agent who are considered by The Employer to be essential employees, that is to say, employees whose duties consist in whole or in part of duties the performance of which at any particular time or during any specific period of time is or may be necessary for the health, safety and security of the public;

AND WHEREAS the Employer and Bargaining Agent did mutually agree on the 10th day of August, A.D. 1984, in light of a memorandum dated 10th day of August, A.D., 1984, to the number of employees employed by the Employer in each classification in the bargaining unit represented by the Bargaining Agent as specified in Schedule "A" annexed hereto to be designated as essential employees within the meaning of Section 10 of The Public Service (Collective Bargaining) Act, 1973, as amended;

NOW, THEREFORE, pursuant to Section 10(2) of The Public Service (Collective Bargaining) Act, 1973, as amended, it is hereby ordered by The Labour Relations Board that the number of employees employed by the Employer in each classification in the bargaining unit represented by the Bargaining Agent as specified in Schedule "A" annexed hereto be and they are hereby designated as essential employees within the meaning of Section 10 of The Public Service (Collective Bargaining) Act, 1973, as amended.

ISSUED at Grand Falls in the Province of Newfoundland this 10th day of August, A.D., 1984.

GORDON G. EASTON, Q.C.
Chairman

J.M. NOEL
Chief Executive Officer

WAYNE FOWLER
Secretary

SCHEDULE "A"

CLASSIFICATION	NUMBER OF ESSENTIAL EMPLOYEES
Nurse I	21 + 3 on call
Nurse/Infection Control	0
Public Health Nurse	0
Psychiatric Nurse I	2
Psychiatric Nurse II	0

Schedule "F"

The Newfoundland Teachers (Collective Bargaining) Act, 1973

Statement of Proceedings before the Board

During the Year, 1984

There was no activity under this legislation during this period.

Schedule "G"

The Occupational Health and Safety Act

Statement of Proceedings Before The Board During The Year, 1984

1.	No. of Applications pending at 1 January, 1984	1
2.	No. of Applications filed during the year	0
3.	No. of Applications dealt with during the year	1

Applications Pursuant to Section 49 Of The Act

1. Allan Smith and Wade Dean and Suburban Construction Limited

Decision

The Board, following consideration of the application and the evidence adduced at a hearing, decided that the application as it relates to Allan Smith was rejected and that the action of Suburban Construction Limited, in terminating Wade Dean was discriminatory under The Occupational Health and Safety Act; and ordered pursuant to Section 50 (1) of The Occupational Health and Safety Act that Suburban Construction Limited:

(1) reinstate Wade Dean under the same terms and conditions under which he was formerly employed.

(2) Compensate Wade Dean for wages, salary and other benefits lost from the date of dismissal and ending with the date of reinstatement less any income received during the period from dismissal to reinstatement.

(3) The Board will retain jurisdiction on the matter of compensation in the event that the parties are unable to agree on the amount.

A hearing was held in connection with this case.

Reasons for decision were issued and are attached as Appendix 1 of Schedule G.

Since the parties were unable to agree upon the amount of compensation, the Board, following consideration of the representations of the interested parties determined that Suburban Construction Limited compensate Wade Dean in the amount of $2,448.00.

Appendix 1, Schedule G

IN THE MATTER OF

The Occupational Health and
Safety Act,

- and -

Allan Smith and Wade Dean
("the Applicant"), Applicants,

- and -

Suburban Construction
Limited ("the Company") Respondent

BEFORE: Gordon G. Easton, Q.C., Chairman;
W. A. Alcock and J. Walsh, Members

REASONS FOR DECISION:

This is a complaint pursuant to Section 49 of the Occupational Health and Safety Act received from Allan Smith and Wade Dean alleging that Suburban Construction Limited discriminated against them because they refused to work pursuant to Section 47(d).

The solicitor for the company argued that the Board did not have a valid complaint before it particularly as it relates to Wade Dean.

On September 29, 1983, the Board received a hand written letter signed by Allan Smith and Wade Dean. Although there was no reference in the body of the letter or complaint with respect to Wade Dean, it was obvious that the letter was meant to include both Smith and Dean since it was signed by both.

The complaint was sent to the company and was received on 7 October, 1983. The letter referred to the applicants as Allan Smith and Wade Dean. The company chose not to make a reply to the application or to raise any objection to the form of the application.

The Board agrees that the company should have clear information on who is making a complaint and the nature of the complaint. In this case, the form of the complaint could have been improved but the Board is satisfied that the company knew who was making the complaint and the general nature of it. The Board saw no reason to deny the complaint based solely on form.

The applicants are complaining to the Board in this case that they were fired because they refused to work in a ditch that was unsafe. The evidence reveals that Allan Smith had commenced work on the company's water and sewer job site in Conception Bay South as a working foremen with six (6) to seven (7) men assigned to him. During his time on the job, the Occupational Health and Safety Inspector had visited the job site several times. On one occasion he spoke with the Inspector about conditions on the job and was asked by him to take an inspection report to Pat Tobin, the Superintendent on the job at the time. Smith also testified that there was no safety committee on the job although, while Tobin was there, meetings were held on Friday afternoons to discuss safety on the job.

Smith appeared to be concerned about the general safety conditions on the job culminating in an incident that happened during the latter part of the week of the 12th of September, 1983. Smith's evidence is not clear but it appears that he spoke with Mr. Duffett, General Manager and Mr. Len Dooling, Superintendent, on the 15th of September about the safety of a ditch he and his men were working in. He also contended that the safety inspector had been on the job. Mr. Duffett apparently told Smith to forget about it for the day and close down the job. He was told to get some bracing and fence off the job.

On Friday, the 16th of September, 1983, he returned to the job. The backhoe working in the ditch needed repairs and Dooling told him to send his men home. Smith remained on the job and did some other work around the site. Smith alleges that Dooling told him at that time that if "you men didn't forget about the safety board and trench boxes, you will all be sent home".

On Friday, the 16th of September, he was given his cheque which included his layoff slip. The reason for dismissal was job reorganization. Smith was upset and tried to determine why he had been terminated. Dooling said it was out of his hands and in response to that Smith called Jim Duffett, General Manager, at his home Friday night. Smith alleges that Duffett told him that he (Smith) was paying too much attention to the safety board and not following the direction of the company.

On the following Monday, Mr. Smith returned to the job site to again try to determine why he was laid off. Further discussions were held with Mr. Duffett and Dooling without success. Smith also alleges that a new man was working the job he had been dismissed from.

Wade Dean gave evidence that he started work with the company as a pipefitter in September, 1983. On September 15th, Mr. Dooling visited the job site where the men were standing around. He alleges that Dooling told the men that they should "forget about the safety board and trench boxes or all of you will be sent home". The job was closed and he was sent to DeHann's crew (foreman on other part of the job). This ditch was caving in and he did not feel like working in it. He complained to the foreman (DeHann) who told him to go inside the manhole to work at grouting.

Dean worked with DeHann's crew on Thursday, 15 September, 1983, and returned to Smith's crew on Friday, 16 September, 1983. Shortly after lunch, Dooling and Duffett visited the job site. Dooling had conversations with the men and the job was closed. On Friday afternoon he picked up his cheque at the office and included was his layoff slip.

Dooling said he didn't know why the men were being laid off. On Monday morning he returned to the job site and again Dooling said he did not know why he was being laid off. Dean and Smith spoke with Mr. Duffett who said he would take the blame for the layoffs. Dean also corroborated Smith's evidence that Duffett told Smith that any chance he had of getting a job with the company was gone when he (Smith) said he was going to go to the Safety Board.

Evidence was given by Cyril Fraize, an Occupational Health and Safety Inspector. He visited the site on a number of occasions and had issued directives, the last being on 26 August, 1983. He had discussed problems on the site with the town representatives, consulting engineers, and the company. He indicated that there were some problems and they should be corrected. On 2nd September, 1983, the job was closed by another inspector.

Fraize said he visited the job site on the 14th or 15th of September. He didn't recall talking to Allan Smith and at that time the conditions of the job were acceptable. No directives were issued.

The evidence of Smith and Dean that Dooling had told Smith to forget about the trench boxes or you will be sent home was corroborated by Mr. Batten, an employee of the company who had worked with Smith's crew the week of the 12th of September, 1983.

Evidence for the company was given by Len Dooling, Jim Duffett, Ralph March and Jim Heiz.

Dooling started work on this job site on 6 September. He was aware that the job had been closed on 2 September, 1983. He was aware that trench boxes were required and he waited for them to be delivered to the site. He received the boxes on 7th and 12th September. Dooling contends that no one worked in the ditches without the safety boxes while he was there.

On 15 September, 1983, the backhoe had broken down and there was no one working in the ditch. He says that there was no mention made of safety at that time. Dooling contends that no men refused to go in a ditch. Mr. Dooling was aware that the safety inspector was around the site on the 15th of September but he did not speak with him.

Dooling contends that he talked with Mr. Duffett, Manager of the Company, on 12 September, 1983, generally about the progress of the job and on Wednesday, the 14th of September decided that the job was overstaffed and that there had to be a layoff. Smith and Dean just happened to be the two laid off at that time. There was no work done in the ditch on Friday and he was not told by anyone that the ditch was unsafe. Dooling also says that Smith asked him if he could go down in the ditch because Chernin (town representative) and the engineer said it was alright.

Dooling also says that he told Smith and Dean that reorganization was the reason for the layoff and he further contends that Mr. Duffett was not back to the site after Wednesday, 14 September, 1983. Mr. Dooling denies that he told Smith, Dean and Batten to stop horsing around, forget about the trench boxes and safety board. He also says that no new employees were hired but men were moved from other sites.

Jim Duffett, General Manager of the company, testified that he met with Dooling on the 8th or 9th of September and discussed the progress of the job. He indicated that Mr. March, Owner, was not satisfied with the progress on the job. Around the same time there was heavy rain and the ditches were heavily mudded. The company had one trench box and rented a second one. On the 12th or 13th September, 1983, he spent some time on the job and on Tuesday morning, the 13th, he told Dooling that he would meet with him on Wednesday. On Wednesday, Dooling and Duffett decided that six (6) to eight (8) men had to be cut. Duffett left the decision to Dooling as to who would go. Duffett denies being on the job on Thursday or Friday. He acknowledges a call from Smith on Friday night at home but denies that he told Smith he was finished with the company because he was going to the safety board. Duffett was not pleased that he received a call at home on a Friday night and the fact that Smith had raised the Goulds incident and other charges that had been laid against the company.

During the hearing a difference arose on the whereabouts of Mr. Duffett on the 16th of September, 1983. The company called evidence to establish his whereabouts. Duffett changed his evidence on recall after checking his diary. He now contended that he was in St. John's area on the 16th of September but did not visit the Conception Bay South site. In the early morning he visited the Woodlands subdivision. He spent some time on the Portugal Cove Road site and had lunch at the airport. He returned to the water line job on Portugal Cove Road and then returned to the office.

John Heiz gave evidence that Duffett was on the site up until 10:20a.m. discussing the road crossing. Heiz requested Duffett to locate Fraize, the inspector. About 2:00p.m. Duffett returned to the site and Fraize showed up about 3:20p.m. Ralph March, Owner of the company, says that he went to site about 1:30p.m. to 2:00 p.m. and met with Duffett and Heiz.

The applicants argue that the reason they were singled out was because of their objection to working in unsafe conditions. The applicants also argue that the onus is on the company to show that the action was not discriminating under the Act.

The company argues that before the onus shifts to the company there has to be a refusal to work. In this case there is no evidence that Smith refused to work and further that on the 15th and 16th of September, 1983, there is no evidence that the ditch was unsafe.

In the case of Wade Dean the company argues that the Board does not have a proper complaint before it and in the alternative if Dean refused to work in the ditch on the 15th, he was reassigned to work inside the manhole.

The complaint to the Labour Relations Board is made pursuant to Section 49 of the Occupational Health and Safety Act. At the outset of the hearing, the company complained that there was not sufficient information in the complaint for the company to prepare a proper defense. In this case, as with many cases where employees file a complaint, there is room for improvement on the form of the complaint. The Board, however, feels that it is unreasonable to expect an untrained person to complete a complaint and quote all relevant Sections of the legislation. The Board agrees that the complaint should be clear enough to give the company knowledge of the case it has to meet in order to make a proper defense, and in this case, feels that the company was aware of the charge it had to meet. The Board is unable to see how the company could be prejudiced by allowing the complaints to stand as presented. Complaints to the Board are sufficient if the parties affected are reasonably able to ascertain the nature of the complaint. In this case the Board feels that the company was fully aware of the situation and was able to prepare a defense.

Section 49 of the Act gives an employee the right to file a complaint if he feels his employer has taken discriminatory action against him for any of the reasons set out in Section 47. In this case the reference was to Section 47(d) which states that the employer shall not take any discriminatory action against a worker by dismissing him because the worker has reasonably refused to work pursuant to his right to do so under Section 43.

Section 43 states:

> "43(1) A worker may refuse to do any work that he has reasonable grounds to believe is dangerous to his health or safety, or the health and safety of any other person at the workplace
>
> (a) until remedial action has been taken by the employer to the worker's satisfaction;
>
> (b) until the committee or worker health and safety representative has investigated the matter and advised him to return to work; or
>
> (c) until an officer has investigated the matter and has advised him to

return to work.

Evidence in this case revealed that there is considerable difference in the facts. There is considerable difference between the company's version of what was said to employees on the job sometime during the week of 12th of September, 1983, and the employees' version. Applicant witnesses are fairly consistent in the fact that Dooling spoke to the employees on the 15th of September and the job was closed down on that day because the backhoe was down. Dooling denies having said anything to the men about safety on the site. The company denies that Duffett was on the site at all after the 14th of September and when on the site denies having made any statements to the employees about safety.

There, however, appears to be little doubt that there were safety problems on the job. Evidence of the Safety Inspector shows that several directives were issued and on one occasion the job was closed. There is also little doubt that Smith was concerned about safety on the site. There is evidence that he complained to his superintendent. There is some question in the Board's mind of the significance of the various problems on the job and comments that may have been made by the company representatives. Section 43 of the Act is specific in that it states that a worker has a right to refuse work he considers unsafe. In the case of Allan Smith there is no evidence that he refused to work and was dismissed. There is evidence that he was unhappy with conditions, but his own evidence reveals that the job was closed down when he pointed out that trench boxes had to be used or the ditch had to be braced. One can speculate that Smith was a thorn in the side of the company which culminated in Smith being dismissed. The Board is unable to find that Smith refused to work in an unsafe ditch and because of this refusal was subsequently dismissed.

In the case of Wade Dean there is evidence that on the 15th of September, 1983, he was moved to a different section of the job under foreman, DeHann. When he reported to the job, he complained to DeHann that he felt the ditch was not safe and DeHann told him to go inside the manhole and do the grouting.

In this situation and pursuant to Section 43(2) the company has a right to assign a worker to other work and the employee is obliged to accept the assignment. In this case this was done but the company failed to return Dean to his job when it was reopened. The Board feels that the company violated the Act as it relates to Dean when it dismissed him instead of returning him to his former job.

The Board is unable to accept the company's explanation that the reason for dismissal was job reorganization.

The union argued that it should have been allowed to bring rebuttal evidence relative to Mr. Duffett's presence on the job site on Friday. With respect, the suggested rebuttal evidence is not truly rebuttal at all. It would merely have been evidence of witnesses who would have asserted that Mr. Duffett was in fact on the job site on the days in question. If a board has to allow rebuttal evidence of this type, a case would seldom if ever be completed as there will always be something to "rebut". This is not the purpose of the rebuttal evidence and, in any event, Mr. Duffett's presence on the site is in no way critical to the Board's decision. The pertinent evidence on which the Board made its decision had already been adduced and the contentuous issue of Mr. Duffett's whereabouts would not have assisted the Board in arriving at its decision.

For the above reasons the Board issued its Order of 5 April, 1984.

ISSUED at St. John's this 18th day of May, 1984.

For the Board,

GORDON G. EASTON, Q.C.
Chairman